THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 19 NOV 2026
DAY
TABLED BY: Hon. (Dr.) James Nyikal (Chairperson, Departmental Committee on Health)
CLERK-AT-THE-TABLE: Shibuko

Approved
SBOS D/SNA
19/11/2026

THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026
DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON HEALTH

.....

REPORT ON THE TOBACCO CONTROL (AMENDMENT) BILL 2024 (SENATE BILL NO. 35 OF 2024) BY SENATOR CATHERINE MUYEKA MUMMA

VOLUME I

(Report on the Consideration ot the Tobacco Control (Amendment) Bill 2024, Adoption Minutes of the report, Report Adoption Schedule)

DIRECTORATE OF DEPARTMENTAL COMMITTEES **NOVEMBER, 2026**
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

NATIONAL ASSEMBLY
RECEIVED
19 NOV 2026
SPEAKER'S OFFICE
P.O. Box 41842-00100 NAIROBI

TABLE OF CONTENTS

TABLE OF CONTENTS ***3***

ANNEXURES ***8***

LIST OF ABBREVIATIONS AND ACRONYMS ***9***

CHAIRPERSON'S FOREWORD ***11***

CHAPTER ONE: INTRODUCTION ***12***

1.0 PREFACE 12

1.1 Establishment and Mandate of the Committee 12

1.2 Subjects under the Committee 12

1.3 Oversight 12

1.4 Committee Membership 13

1.5 Committee Secretariat 14

CHAPTER TWO: BACKGROUND OF THE TOBACCO CONTROL (AMENDMENT) BILL 2024 (SENATE BILL NO. 35 OF 2024) ***15***

2.0 Background 15

2.1 Situational Analysis 15

2.2 Legal and policy framework 15

2.3 Comparative Analysis 16

CHAPTER THREE: BRIEF ON THE TOBACCO CONTROL (AMENDMENT) BILL 2024 (SENATE BILL NO. 35 OF 2024) ***18***

3.0 Background of the Bill 18

3.1 Summary of the Bill 18

CHAPTER FOUR: CONSIDERATION OF THE BILL BY THE COMMITTEE *26*

4.0 Legal Provision on Public Participation 26

4.1 Public Participation in the Review of the Bill 26

4.2 Submissions on the Bill 27

4.3 Clause-By-Clause Submissions 29

1) The Ministry of Health (MoH) submitted as follows: *29*

2) The National Treasury submitted as follows: *31*

3) The Ministry of Investments, Trade and Industry, State Department for Industry submitted as follows:32

4) The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) from branches in Laikipia, Tharaka-Nithi and Meru Counties, submitted as follows: *35*

5) The State Department for Micro, Small and Medium Enterprises (MSMEs) Development submitted as follows: 44
6) The Office of the Attorney-General and Department of Justice submitted as follows: 50
7) The Kenya Law Reform Commission (KLRC) submitted as follows: 51
8) The Council of Governors submitted as follows: 53
9) The Kenya Revenue Authority (KRA) submitted as follows: 55
10) The Anti-Counterfeit Authority (ACA) submitted as follows: 57
11) The Kenya Bureau of Standards (KEBS) submitted as follows: 63
12) The Pharmacy and Poisons Board submitted as follows: 65
13) The National Quality Control Laboratory (NQCL) submitted as follows: 69
14) Kenya National Commission on Human Rights (KNCHR) submitted as follows: 76
15) Sen. Catherine Muyeka Mumma, CBS, MP, submitted as follows: 78
16) Coulson Harney LLP submitted as follows: 84
17) ADRA Advocates LLP submitted as follows: 89
18) Institute of Economic Affairs submitted as follows: 101
19) The National Council of Churches of Kenya submitted as follows: 107
20) The Kenya Private Sector Alliance submitted as follows: 117
21) The Kenya Association of Manufacturers (KAM) submitted as follows: 119
22) The Kenya National Chamber of Commerce and Industry (KNCCI) submitted as follows: 122
23) The Pubs, Entertainment and Restaurants Association of Kenya (PERAK) submitted as follows: 127
24) The Harm Reduction Society of Kenya, from branches in Laikipia, Tharaka-Nithi and Meru Counties, submitted as follows: 128
25) The Retail Trade Association of Kenya (RETRAK), from branches in Laikipia, Tharaka-Nithi and Meru Counties, submitted as follows: 131
26) The Pubs, Entertainment and Restaurants Association of Kenya (PERAK), from branches in Laikipia, Tharaka-Nithi and Meru Counties, submitted as follows: 133
27) British American Tobacco Kenya PLC (BAT Kenya) submitted as follows: 134
28) The Kenya Medical Association (KMA) submitted as follows: 136
29) The Kenya Paediatric Association (KPA) submitted as follows: 136
30) Tropikal Spaces Limited submitted as follows: 138
31) Dentons Hamilton Harrison and Mathews Advocates submitted as follows: 140
32) Dave Siganga, Advocate submitted as follows: 142
33) Okwach and Company Advocates submitted a memorandum (Ref. NA/DDC/DC-H/2026/89) as follows: 151

34) Dr. Duncan Okubasu, PhD, submitted as follows: 155
35) Amollo Simba & Associates Advocates (the Firm) submitted as follows:..... 156
36) Dr. Andrew Owuor, Lung and Respiratory Specialist at Kenyatta National Hospital, submitted as follows:158
37) Professor Emeritus Prakit Vathesatogkit submitted as follows: 160
38) Dr. Praneet Valodia submitted as follows:..... 161
39) The Kenya Tobacco Control and Health Promotion Alliance (KETCA) submitted as follows:... 162
40) Development Gateway submitted as follows: 174
41) Diplomats for Health in Resilient Community (DFH-RC) submitted as follows: 183
42) Women Amplifying Voices Against Impunity CBO (WEKESWA) submitted as follows:..... 191
43) Child Space Organization submitted as follows: 200
44) The Nyandarua Cancer Support Group submitted as follows:..... 209
45) The Pubs, Entertainment and Restaurants Association of Kenya (PERAK), in a separate memorandum, submitted as follows: 218
46) The Network of TB Champions Kenya (NTBC-K) submitted as follows: 218
47) Tobacco industry manufacturers and importers 219
48) The People Living with NCDs submitted as follows:..... 220
49) Africa Cancer Foundation submitted as follows: 230
50) Foresight Advisory Africa submitted as follows:..... 236
51) Resolutions Recovery Centre submitted as follows: 243
52) The Retail Trade Association of Kenya (RETRAK), in a separate memorandum, submitted as follows:249
53) Faraja Cancer Support Trust submitted as follows:..... 251
54) The Society of Community Health Caregivers (SOCHE) submitted as follows: 259
55) Slum Child Foundation submitted as follows:..... 268
56) Support Heal and Purpose to Elevate (SHAPE) submitted as follows:..... 277
57) Elewa Ulevi Consultancy submitted as follows:..... 286
58) The International Institute of Legislative Affairs submitted as follows:..... 295
59) The National Taxpayers Association submitted as follows:..... 301
60) The Students Campaign Against Drugs submitted as follows: 306
61) The Non-Communicable Diseases Alliance Kenya submitted as follows:..... 312
62) The Kenya Law Students Society submitted as follows:..... 317
63) The Association of Public Health Officers submitted as follows: 317

64) Women Amplifying Voices Against Impunity CBO (WEKESWA), in a separate memorandum, submitted as follows: 319
65) The Nova Life Society submitted as follows: 324
66) The National Cancer Institute of Kenya submitted as follows: 330
67) Kenyan Network of Cancer Organizations submitted as follows: 331
68) Talk to Save the Youth Organisation submitted as follows: 341
69) Kajiado County NCDs Chapter submitted as follows: 343
70) Women for Cancer Early Detection and Treatment (Women 4 Cancer) submitted as follows: 344
71) The African Institute for Health and Development (AIHD) submitted as follows: 354
72) The Purple Heart Organization (Purple Heart) submitted as follows: 364
73) Women for Cancer Early Detection and Treatment (Women 4 Cancer), in a separate memorandum, submitted as follows: 373
74) Blue Cross Kenya submitted as follows: 378
75) The Society of Community Health Caregivers (SOCHE), in a separate memorandum, submitted as follows: 379
76) The Kiambu Cancer Support Group (KCSG) submitted as follows: 380
77) Laikipia County Youth in Business submitted as follows: 381
78) Ms. Whitney Odhiambo of Blue Cross Kenya Youth submitted as follows: 383
79) Beatrice Bahati Mwendwa submitted as follows: 388
80) Mr. Fredrick Mwangi of Kenyatta University submitted as follows: 398
81) Mr. Henry Muema Ndata submitted as follows: 407
82) Ms. Mercy Nduta Ndung'u submitted as follows: 415
83) Mr. John Michael Obure Obure of Railway Ward, Kisumu, submitted as follows: 423
84) Mr. David Ogoro of the Kisumu County Deaf Association submitted as follows: 424
85) Ms. Murigi Grace Njeri of Kenyatta University and a tobacco control advocate submitted as follows:425
86) Wanderi Nyawira, a tobacco control advocate and a pharmacy student at Kenyatta University, submitted as follows: 433
87) Caleb Ngala, Founder of Mathare Community Anti-Drugs and Alcohol 434
88) Ms. Phanice Muchina Makunda submitted as follows: 436
89) Mr. Victor Karanja Ndegwa submitted as follows: 438
90) Mr. Eric Kago of Kago Close, Itanga Road, Nairobi, submitted as follows: 438
91) Mr. Henry Muema Ndata, submitted as follows: 450
92) Ms. Amani Maria submitted as follows: 461

93) *Mr. Leone A. Otwoma submitted as follows:* 472
94) *The Bars, Hotels and Liquor Traders Association of Kenya (BAHLITA) submitted as follows:*.. 473
95) *Oliver Mathenge submitted as follows:* 474
96) *Amos Kamau submitted as follows:* 474
97) *Bunge la Mwananchi submitted as follows:* 478
98) *Samuel Nyapara submitted as follows:* 479
99) *TINADA Youth submitted as follows:* 484
100) *The Elementaita Small Traders Association submitted as follows:* 485
101) *The Kenya Scouts Association submitted as follows:* 485
102) *The Institute of Certified Public Accountants of Kenya (ICPAK) submitted as follows:* 485
103) *Mrs. Eva Kinyanjui of Tobacco Harm Reduction Caucus submitted as follows:* 486
104) *Mr. Tonny Blair Omondi, from Homa Bay County, submitted as follows:* 486
105) *Mr. Onyango George, a pharmacy student at Kenyatta University submitted as follows:* 488
106) *Amos Kamau submitted as follows* 490
107) *The Kenya Scouts Association submitted as follows:* 490
108) *Jackline Mbone Juma, a Public Health Officer from Kakamega, submitted as follows;* 490
109) *Edwinson Barasa Makunda submitted that;* 491
110) *Honest Kawa submitted that;* 492
111) *Child Space Organisation submitted that* 499
112) *Ngala Marie Goretti submitted general recommendations as follows:* 499
113) *Talk to Save Youth CBO submitted general recommendations as follows:* 500
114) *SHAPE Organization submitted that;* 502
4.4 General Comments on the Bill by Stakeholders 502
4.5 Public Hearings in the Counties 515
CHAPTER FIVE: COMMITTEE OBSERVATIONS ***520***
CHAPTER SIX: COMMITTEE RECOMMENDATIONS ***524***
CHAPTER SEVEN ***525***
7.0 SCHEDULE OF AMENDMENTS ***525***

CHAPTER SEVEN: SCHEDULE OF AMENDMENTS ***524***

ANNEXURES

Annexure 1:	Minutes of Committee sittings
Annexure 2:	Report Adoption Schedule
Annexure 3:	Copy of the newspaper advertisement inviting the public to submit views on the Bill
Annexure 4:	Copy of the newspaper advertisement on public participation on the Bill
Annexure 5:	Letter inviting stakeholders for a meeting with the Committee on the Bill
Annexure 6:	Stakeholder submissions

LIST OF ABBREVIATIONS AND ACRONYMS

ACA	Anti-Counterfeit Authority
AIMS	Anti-Counterfeit Integrated Management System
AIHD	African Institute for Health and Development
B2B	Business-to-Business
BAHLITA	Bars, Hotels and Liquor Traders Association of Kenya
BAT	British American Tobacco
CBO	Community-Based Organization
CECM	County Executive Committee Member
COG	Council of Governors
CS	Cabinet Secretary
CSO	Child Space Organization / Civil Society Organization
CSR	Corporate Social Responsibility
CWR	County Woman Representative
DFH-RC	Diplomats for Health in Resilient Community
DSA	Designated Smoking Area
EAC	East African Community
EAS	East African Standard
EGMS	Excisable Goods Management System
EMCA	Environmental Management and Co-ordination Act
ENDS	Electronic Nicotine Delivery Systems
ENNDS	Electronic Non-Nicotine Delivery Systems
EPR	Extended Producer Responsibility
EPZ	Export Processing Zone
EU	European Union
EVALI	E-cigarette or Vaping Product Use-Associated Lung Injury
FCTC	Framework Convention on Tobacco Control
FDA	Food and Drug Administration
HS	Harmonised System
HTP	Heated Tobacco Product
ICPAK	Institute of Certified Public Accountants of Kenya
iCMS	Integrated Customs Management System
ID	Identification
IMF	International Monetary Fund
IPR	Intellectual Property Rights
ISO/IEC	International Organization for Standardization / International Electrotechnical Commission
KAM	Kenya Association of Manufacturers
KCSG	Kiambu Cancer Support Group
KEBS	Kenya Bureau of Standards
KenTrade	Kenya Trade Network Agency
KES / KSh / Kshs.	Kenyan Shilling

KETCA	Kenya Tobacco Control and Health Promotion Alliance
KMA	Kenya Medical Association
KNCCI	Kenya National Chamber of Commerce and Industry
KPA	Kenya Paediatric Association
KRA	Kenya Revenue Authority
KS	Kenya Standard
KYC	Know Your Customer/ Kenya Youth Council
MDA	Ministries, Departments, and Agencies
MOH / MoH	Ministry of Health
MP	Member of Parliament
MSEA	Micro and Small Enterprises Authority
MSME	Micro, Small, and Medium Enterprises
NACADA	National Authority for the Campaign Against Alcohol and Drug Abuse
NCD	Non-Communicable Disease
NEMA	National Environment Management Authority
NGO	Non-Governmental Organization
NQCL	National Quality Control Laboratory
NRT	Nicotine Replacement Therapy
NTBC-K	Network of TB Champions Kenya
ODM	Orange Democratic Movement
OECD	Organisation for Economic Co-operation and Development
PERAK	Pubs, Entertainment and Restaurants Association of Kenya
POS	Point of Sale
PRO	Producer Responsibility Organisation
QR	Quick Response
RETRAK	Retail Trade Association of Kenya / Retail Traders Association of Kenya
SEZ	Special Economic Zone
SHAPE	Support Heal and Purpose to Elevate
SME	Small and Medium-sized Enterprise
SOCHE	Society of Community Health Caregivers
TAPS	Tobacco Advertising, Promotion and Sponsorship
TB	Tuberculosis
TCA	Tobacco Control Act
UDA	United Democratic Alliance
UK	United Kingdom
UPIA	United Party of Independent Alliance
US	United States
USB	Universal Serial Bus
VPN	Virtual Private Network
WEKESWA	Women Amplifying Voices Against Impunity CBO
WHO	World Health Organization
WTO	World Trade Organization

CHAIRPERSON'S FOREWORD

Mr. Speaker, Sir,

Pursuant to Standing Order 199(6), I have the honour to present the Report of the Departmental Committee on Health on the **Tobacco Control (Amendment) Bill, 2024 (Senate Bill No. 35 of 2024)**, sponsored by Senator Catherine Muyeka Mumma. Passed with amendments by the Senate, the Bill underwent its First Reading in the National Assembly on 1st April, 2026, and was committed to the Committee under Standing Order 127 to address a vital regulatory gap: placing electronic nicotine delivery systems, including e-cigarettes and novel products, firmly under statutory oversight.

In strict obedience to Article 118(1)(b) of the Constitution, the Committee conducted rigorous public participation. Through national print media on **Friday,10th April, 2026** and formal engagements between **Tuesday, 22nd and Wednesday, 23rd September, 2026,** we received submissions from over 120 diverse stakeholders, ranging from State agencies and the Council of Governors to civil society, private entities, and individual citizens. To ensure grassroots representation, the Committee held public hearing barazas across seven counties: Nairobi, Meru, Tharaka Nithi, Uasin Gishu, Bungoma, Kisumu, and Laikipia from **Thursday, 24th** to **Saturday, 26th September, 2026.** The Committee considered the views received, which are contained in Chapter Four of this Report.

With sincere gratitude to the Offices of the Speaker and the Clerk, as well as the Honourable Members and Secretariat for their steadfast dedication, the Departmental Committee on Health now presents its findings and recommends that this House **approve the Bill with amendments**.

On behalf of the Departmental Committee on Health and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of **the Tobacco Control (Amendment) Bill, 2024 (Senate Bill No. 35 of 2024) by Senator Catherine Muyeka Mumma.**

It is my pleasure to report that the Committee has considered the Tobacco Control (Amendment) Bill, 2024 (Senate Bill No. 35 of 2024). It has the honour to report back to the National Assembly with the recommendation that the Bill be **approved with amendments as reported by the Committee**.

HON. (DR.) JAMES WAMBURA NYIKAL, CBS, MP.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

CHAPTER ONE: INTRODUCTION

1.0 Preface

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Health is one of the twenty (20) Departmental Committees of the National Assembly established under **Standing Order 216,** whose mandate under **Standing Order 216 (5)** is as follows: -
   (i) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
   (ii) *study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
   (iii) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
   (iv) *study and review all legislation referred to it;*
   (v) *study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
   (vi) *Investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House;*
   (vii) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointment;*
   (viii) *examine treaties, agreements and conventions;*
   (ix) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
   (x) *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
   (xi) *examine any questions raised by Members on a matter within its mandate.*

1.2 Subjects under the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters related to health, medical care and health insurance, including universal health coverage.

1.3 Oversight

3. In executing its mandate, the Committee on Health oversees the:
   i. State Department for Medical Services
   ii. State Department for Public Health and Professional Standards.

1.4 Committee Membership

4. The Departmental Committee on Health was constituted by the House on 27th October 2022 and comprises the following Members:

Chairperson
Hon. Dr. Nyikal James Wambura, CBS MP
Seme Constituency
ODM Party

Vice-Chairperson
Hon. Ntwiga, Patrick Munene MP
Chuka/Igambang'ombe Constituency
UDA Party

Hon. Owino Martin Peters, MP
Ndhiwa Constituency
ODM Party

Hon. Maingi Mary, MP
Mwea Constituency
UDA Party

Hon. Muge Cynthia Jepkosgei, MP
Nandi (CWR)
UDA Party

Hon. Mathenge Duncan Maina, MP
Nyeri Town Constituency
UDA Party

Hon. Wanyonyi Martin Pepela, MP
Webuye East Constituency
Ford Kenya Party

Hon. Lenguris Pauline, MP
Samburu (CWR)
UDA Party

Hon. Kipng'ok Reuben Kiborek , MP
Mogotio Constituency
UDA Party

Hon. Oron Joshua Odongo, MP
Kisumu Central Constituency
ODM Party

Hon. (Dr) Robert Pukose, CBS MP
Endebess Constituency
UDA Party

Hon. (Prof.) Jaldesa Guyo Waqo, MP
Moyale Constituency
UPIA Party

Hon. Kibagendi Antoney, MP
Kitutu Chache South Constituency
ODM Party

Hon. Mukhwana Titus Khamala, MP
Lurambi Constituency
ODM Party

Hon. Julius Ole Sunkuli Lekakeny, MP
Kilgoris Constituency
KANU

1.5 Committee Secretariat

5. The following staff facilitate the Committee:

Dr. Christine Sagini
Senior Clerk Assistant /Head of Secretariat

Mr. Ellam Omuhinda
Clerk Assistant II

Ms. Gladys Jepkoech Kiprotich
Clerk Assistant II

Ms. Marlene Ayiro
Principal Legal Counsel I

Ms. Mercy Kinyua
Legal Counsel I

Mr. Hiram Kimuhu
Fiscal Analyst II

Mr. Eric Lungai
Hansard Officer

Ms. Maryan Gabow
Protocol Officer

Ms. Sheila Chebotibin
Senior Serjeant-At-Arms

Ms. Abigael Muinde
Research Officer III

Ms. Mercy Achieng Ondego
Research Officer III

Mr. Daniel Psirmoi
Media Relations Officer II

Ms. Mercilyn Kerubo
Audio Recording Officer II

CHAPTER TWO: BACKGROUND OF THE TOBACCO CONTROL (AMENDMENT) BILL 2024 (SENATE BILL NO. 35 OF 2024)

2.0 Background

6. Kenya enacted the Tobacco Control Act in 2007 to give effect to the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), which Kenya ratified in 2004. The Act established the Tobacco Control Board, set rules on smoke-free places, packaging, advertising and taxation, and created offences for breaches of the Act.

7. Since 2007, the nicotine product market has changed substantially. Electronic cigarettes, vapes, heated tobacco products and nicotine pouches now compete with traditional cigarettes, yet the 2007 Act does not provide for electronic nicotine delivery systems, product approval regime for them, and rules for their sale online. This gap has allowed manufacturers and importers to market novel nicotine products, often to young people, with minimal oversight.

8. The Bill therefore closes a regulatory gap by providing a regulatory framework for electronic nicotine delivery systems, nicotine pouches and synthetic nicotine, none of which the 2007 Act anticipated.

2.1 Situational Analysis

9. Kenya's nicotine product market has outgrown the Tobacco Control Act of 2007. Electronic cigarettes, heated tobacco products and nicotine pouches are sold in Kenya today without dedicated product standards, pre-market approval requirements, and restriction on online sales, leaving manufacturers and importers free to market these products, including to persons under eighteen, with minimal oversight.

10. Use of these products among young people is rising. A 2024 NACADA study on drug and substance use among university students found that 12 per cent of respondents currently use tobacco products, 5.8 per cent use e-cigarettes, and 4.6 per cent use nicotine pouches, with flavoured products, attractive packaging and social media marketing being identified as key drivers of uptake.

11. Illicit trade in cigarettes has grown sharply in the same period, from an estimated 27 per cent of the market in 2023 to 37 per cent in 2024 and 45 to 47 per cent by the end of 2025, according to industry and market-research data, costing the Exchequer an estimated Sh12 billion a year in foregone tax revenue.

2.2 Legal and policy framework

12. The Constitution of Kenya, 2010, Article 43(1)(a) guarantees the right to the highest attainable standard of health, Article 26 protects the right to life, which the Bill's product safety and

toxicology requirements support. Article 42 protects the right to a clean and healthy environment, engaged by the ban on single-use plastics in tobacco packaging. Article 46 protects consumer rights to information and to goods that meet reasonable quality standards, engaged by the labelling and warning provisions. The Fourth Schedule to the Constitution assigns functions between the two levels of government: licensing of premises is devolved, while tobacco product standards and approval remain a national function, and the Bill must carefully navigate this dual structure carefully.

13. The Bill is consisted with the Health Act, Cap, 241, The Public Health Act, Cap. 242 and the Consumer Protection Act. National policy anchors include the Kenya Health Policy 2014–2030, which prioritizes prevention and control of non-communicable diseases; the National Strategy for the Prevention and Control of Non-Communicable Diseases; the Kenya National Cancer Control Strategy; the National Tobacco Control Strategic Plan; and the Universal Health Coverage policy framework, which the Bill supports by directing a share of tobacco tax revenue toward non-communicable disease prevention and treatment.

14. The WHO FCTC, Article 5.3 requires Parties to protect public health policy from tobacco industry interference, given direct domestic effect by the conflict-of-interest disqualification for Committee members under new section 5B. Articles 9 to 11 address product regulation, disclosure, packaging and labelling, reflected in the new product approval regime and the plain-packaging provisions. Article 13 addresses advertising, promotion and sponsorship, reflected in the extension of the advertising ban to digital platforms. Article 16 addresses sales to minors, reflected in the hundred-metre school-radius rule. Sustainable Development Goal target 3.4 (a one-third reduction in premature non-communicable disease mortality by 2030) and target 3.a (strengthened WHO FCTC implementation) further situate the Bill within Kenya's international commitments.

2.3 Comparative Analysis

15. This part contains a comparative analysis of the legislation on tobacco and nicotine product control in South Africa, Sweden and the Philippines. Notably, Sweden and Phillipines have legislated on electronic nicotine delivery systems with South Africa as a comparable common-law, devolved African jurisdiction.

16. South Africa has not yet enacted law specifically regulating e-cigarettes and nicotine pouches, but Parliament is considering the Tobacco Products and Electronic Delivery Systems Control Bill. The existing Tobacco Products Control Act 83 of 1993, as amended, primarily regulates conventional tobacco products, including cigarettes, cigars, pipe tobacco and snuff. The proposed Bill seeks to regulate tobacco and electronic delivery systems, including packaging, advertising, sales to minors, free distribution and vending-machine sales. Importantly, the Portfolio Committee on Health has recognised that tobacco and nicotine products do not

present the same level of risk. It has therefore recommended differentiated and risk-proportionate regulation.

17. Sweden's Act on Tobacco and Similar Products (2018:2088) provides a comprehensive framework covering smoke-free environments, packaging and labelling, advertising, ingredients, sales restrictions and e-cigarettes. Manufacturers and importers are required to notify the Public Health Agency before placing e-cigarettes and refill containers on the market and to submit annual reports. Sweden does not require pre-market approval of each product. It also permits e-liquid flavours and online sales, subject to regulatory oversight and registration. Sweden has not adopted full plain packaging for e-cigarettes but has expanded smoke-free restrictions to outdoor areas, including outdoor serving areas, playgrounds, bus shelters, train platforms, sports arenas and entrances to public buildings, with the restrictions also applying to e-cigarettes.

18. The Philippines regulates conventional tobacco products under Republic Act No. 9211 of 2003, which addresses smoking in public places, advertising, promotion, sponsorship and sales restrictions. Republic Act No. 11900 of 2022 provides a separate framework for e-cigarettes, heated tobacco products and other novel tobacco and nicotine products, including nicotine pouches. Regulatory responsibility for these emerging products is placed under the trade ministry, in consultation with the health regulator.

CHAPTER THREE: BRIEF ON THE TOBACCO CONTROL (AMENDMENT) BILL 2024 (SENATE BILL NO. 35 OF 2024)

3.0 Background of the Bill

3 The Tobacco Control (Amendment) Bill, 2024 (hereinafter referred to as "the Bill"), is sponsored by Senator Catherine Muyeka Mumma, and was referred to the Departmental Committee on Health for consideration after First Reading on 1st April 2026. The Bill is co-sponsored in the National Assembly by Hon. Millie Odhiambo Mabona, MP and Hon. Samuel Atandi, MP.

4 The principal object of the Bill is to amend the Tobacco Control Act, Cap. 245A (the Act) to further regulate the production, sale, advertisement and smoking of nicotine products (both natural, i.e. tobacco and synthetic), including the use of nicotine pouches (packets containing powdered nicotine) and electronic nicotine delivery systems (popularly known as vapes).

5 The Bill prohibits the manufacture, importation, distribution, storage or sale of nicotine products without the prior approval of the Cabinet Secretary for Health. It further restricts the manufacture, distribution, marketing, sale and use of electronic nicotine delivery systems, their refill containers and nicotine pouches. It also restricts the advertisement of tobacco products, electronic nicotine delivery systems and nicotine pouches.

3.1 Summary of the Bill

2. **Clause 1** of the Bill provides for the short title, being the Tobacco Control (Amendment) Act, 2024.

3. **Clause 2** seeks to amend the long title of the Act by deleting the reference to the "Tobacco Control Board" and substituting therefor the "Tobacco Control Advisory Committee", in line with the institutional changes proposed under Clause 5.

4. **Clause 3** seeks to amend section 2 of the Act as follows:
   (a) deleting the definitions of the words "Board", "cinema", "information advertising" and "specially designated smoking area".
   (b) deleting the definitions of the words "ingredients", "manager", "smoking", "tobacco product" and substituting therefor the following new definitions—

   "ingredients" means the substances added to tobacco products during the manufacturing process or arising from agricultural practices, including —

(i) tobacco, nicotine and chemicals used in the creation of aerosol or vapour in electronic cigarettes and related products;
(ii) components and materials used in the manufacture of those components;
(iii) additives and processing aids;
(iv) residual substances resulting from agricultural practices, storage and processing; and
(v) substances that migrate from the packaging material into the product or are otherwise present in the product;

"manager" means the owner, occupier, lessee, or a person in-charge or in control of the specified institution, place or premises;

"smoking" means inhaling or exhaling the smoke or vapor of any tobacco product or any other substance delivered through electronic means, and includes the holding of, or control over, any ignited or activated tobacco product, device containing an ignited or activated tobacco product, or electronic delivery system or other substances via vaporising;

"tobacco product" means any product whether composed in whole or in part of —
(a) tobacco, including tobacco leaves and any extract thereof;
(b) nicotine from any source, including synthetic nicotine formulations; or
(c) nicotine analogues;
intended for use by smoking, inhalation, chewing, sniffing, vaping or sucking or to be consumed by any other means, and includes cigarette papers, tubes, filters, any electronic delivery systems, and the solutions or liquids intended for use in such devices.

(c) inserting the following new definitions:

(1) "additive" means a substance, other than tobacco, that is added to a tobacco product, unit pack or container pack during manufacturing process or through agricultural practices;
(2) "advertisement" means the promotion of a tobacco product by means of its brand characteristics;
(3) "characterising flavour" means a smell or taste other than one of tobacco which —
(a) is clearly noticeable before, during or after consumption of the product; and
(b) results from an additive or a combination of additives, including fruit, spice, herbs, alcohol, candy, menthol or related flavours;
(4) "Committee" means the Tobacco Control Advisory Committee established under section 5 of this Act;
(5) "electronic cigarette" means a product that —
(a) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether

the product is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges); and

(b) is not a medicinal substance or a medical device as defined in the Pharmacy and Poisons Act;

(6) "electronic nicotine delivery system" means an electronic device, and any associated accessories, components, or parts, that is designed, manufactured, or capable of being used to —

(a) aerosolise, vaporise, or otherwise convert a substance into an inhalable form; and

(b) deliver such aerosol, vapour, or other substance to a person through inhalation,

whether or not the substance contains nicotine, and includes but is not limited to electronic *cigarettes*, electronic cigars, electronic cigarillos, electronic hookahs, vape pens, vape pods, and similar devices, regardless of their shape, size, or appearance;

(7) "institution of basic education and training" has the meaning assigned to it under the Basic Education Act, Cap. 211;

(8) "nicotine pouch" means a prefilled packet containing powdered nicotine or nicotine analogues;

(9) "tobacco smoke" means—

(a) smoke, fumes, gases, or particulate matter produced by the burning, heating, or combustion of tobacco or any tobacco product; and

(b) aerosol, vapour, or emissions produced by the use of an electronic delivery system,

and includes any combination thereof, whether visible or invisible, that is released into the air and capable of being inhaled by persons in the vicinity; and

(10) "unit pack" means the smallest individual packaging in which a tobacco product or related product is, or is intended to be, presented for retail sale.

5. **Clause 4** seeks to amend section 4 of the Act by—

(a) substituting references to the "Board" with the "Committee" in the introductory phrase and in paragraph (d); and

(b) inserting a new paragraph (f) empowering the prohibition of the manufacture, sale, distribution or importation of a tobacco product that does not comply with the Act.

6. **Clause 5** seeks to delete section 5 of the Act, which establishes the Tobacco Control Board, and to substitute new sections 5 to 5I as follows—

(a) **section 5** establishes the Tobacco Control Advisory Committee;

(b) **section 5A** provides for the membership of the Committee, being a chairperson appointed by the Cabinet Secretary; the Principal Secretaries responsible for public health and for the National Treasury; the Director-General for health; the chairperson of the Council of County Governors health committee; a tobacco control expert nominated by

the Council of County Governors; a representative of the business community nominated by the Kenya National Chamber of Commerce and Industry; a nominee of the Kenya Medical Association; a representative of non-governmental organisations involved in tobacco control; and the chief executive officer of the National Youth Council. The members of the Board are to be appointed by the Cabinet Secretary by notice in the *Gazette*;

(c) **section 5B** disqualifies from membership persons employed by or representing the tobacco industry, persons with a direct or indirect pecuniary interest in the industry, and persons who have contravened the Conflict of Interest Act. Failure by a member to disclose an affiliation to the tobacco industry is an offence punishable by a fine not exceeding one million shillings, imprisonment for a term not exceeding five years, or both;

(d) **section 5C** requires the chairperson to have at least ten years' experience in public health, five of which shall be at senior management level;

(e) **section 5D** provides that the chairperson shall serve a term of three years, renewable once for a further term of five years, while the members under paragraphs (f) to (i) shall serve a term of three years, renewable once;

(f) **sections 5E and 5F** empower the Committee to invite persons not affiliated to the tobacco industry to advise it without a right to vote, and to regulate its own procedure subject to the directions of the Cabinet Secretary;

(g) **section 5G** provides that the expenses of the Committee shall be defrayed out of monies appropriated by the National Assembly;

(h) **section 5H** provides for payment of allowances to the chairperson and members as advised by the Salaries and Remuneration Commission; and

(i) **section 5I** provides that the secretariat of the Committee shall be provided by the unit responsible for tobacco control in the Ministry responsible for health.

7. **Clause 6** proposes consequential amendments to section 6 of the Act (functions) by substituting the word "Board" with "Committee" in the section heading and introductory phrase.

8. **Clause 7** seeks to amend section 7 of the Act, which relates to the Fund, by—

   (a) substituting subsection (2)(f) to provide, as a source of the Fund, a solatium compensatory contribution payable by licensed tobacco product manufacturers or importers as may be determined by the Committee; and

   (b) inserting a new paragraph (aa) in subsection (4) to include the treatment of chronic illnesses caused by the use of tobacco products as an application of the Fund.

9. **Clause 8** seeks to amend section 8(3) of the Act by inserting a new paragraph (da) requiring the publication of an annual report on research activities and programmes, including research findings and the impact of the programmes.

10. **Clause 9** seeks to to amend section 9(5) of the Act by substituting the words "local authority" with "county government", aligning the Act with the devolved system of government under the Constitution.

11. **Clause 10** proposes to delete section 12 of the Act and substitute a new section 12 (tax and price policies) requiring the Cabinet Secretary responsible for finance to—
    (a) implement tax measures on unprocessed tobacco and tobacco products to contribute to the objectives of the Act;
    (b) periodically review and adjust tax rates to reflect public health objectives and inflation, and apply inflation adjustments to specific tax rates;
    (c) prohibit the sale or importation of tax-free tobacco and tobacco products;
    (d) allocate a portion of tobacco tax revenues to the prevention and control of non-communicable diseases;
    (e) implement measures to prevent illicit trade in tobacco and tobacco products; and
    (f) exclude the manufacture, repackaging, processing or importation of tobacco and tobacco products from duty-free zones.

12. **Clause 11** seeks to amend section 14 of the Act in subsection (2) by inserting the word "product" immediately after the word "tobacco".

13. **Clause 12** proposes to insert new sections 14A to 14J into the Act as follows—
    (a) **section 14A** sets out mandatory requirements for electronic nicotine delivery systems and refill containers, including a maximum refill container volume of ten millilitres, a maximum cartridge or tank volume of two millilitres, a maximum nicotine concentration of twenty milligrams per millilitre, prohibition of specified additives, use of pure ingredients, consistent nicotine delivery, and child-proof, tamper-proof and leak-proof design. Further, contravention of the section attracts a fine not exceeding one million shillings, imprisonment for a term not exceeding two years, or both;
    (b) **section 14B** requires nicotine pouches to be child-proof and tamper-proof, to deliver consistent nicotine doses and to contain not more than twenty milligrams of nicotine per pouch, with a similar penalty;
    (c) **section 14C** prohibits the manufacture or importation of a tobacco product without the approval of the Cabinet Secretary. An **application** is to be made at least six months before first supply, and a manufacturer supplying a product before commencement is to apply within three months of commencement. Approval is also required for products that are substantially modified;
    (d) **section 14D** prescribes the information to accompany an application, including details of the manufacturer, importer or **responsible** person in Kenya, ingredients and emissions, toxicological data, product components, the production process and a declaration of responsibility. Approval is not required where another entity has already obtained approval for the same product;

(e) **section 14E** requires the submission of samples, which are to be tested by the Kenya Bureau of Standards for conformity and **accuracy** of the information submitted;

(f) **section 14F** requires the Cabinet Secretary to communicate a decision in writing within ninety days, and where approval is declined, requires the manufacturer to take corrective action, withdraw the product from the market and recall it;

(g) **section 14G** prohibits dealing in unapproved products, with a fine not exceeding one million shillings or five percent of the person's gross turnover, whichever is higher, imprisonment for a term not exceeding two years, or both;

(h) **sections 14H and 14I** empower the Cabinet Secretary to ban non-conforming products and require the publication of a list of approved and banned products, authorised manufacturers and importers, and the dates and validity of approvals; and

(i) **section 14J** prohibits tobacco products containing additives and characterising flavours including vitamins or additives implying health benefits, caffeine or stimulants, additives with colouring effects on emissions, additives that facilitate inhalation or nicotine uptake, additives that increase toxicity or addictiveness, and additives resulting in a characterising flavour (including fruit, spice, herbs, alcohol, candy and menthol). Further, contravention shall attract a **fine** not exceeding one million shillings, imprisonment for a term not exceeding two years, or both

14. **Clause 13** proposes to substitute section 15(5) of the Act to prohibit the manufacture or sale of objects such as sweets, snacks and toys designed to resemble tobacco products, and of tobacco products designed to imitate such objects, where they would reasonably appeal to persons under eighteen years. A new subsection (5A) prohibits the sale of tobacco products within a radius of one hundred metres from any place primarily serving persons under eighteen years.

15. **Clause 14** proposes to amend section 16 of the Act to increase the dimensions of the prescribed sign from 12" by 8" to 20" by 12", require the sign to be red on a white background, and increase the penalty from fifty thousand shillings or six months' imprisonment to five hundred thousand shillings or one year's imprisonment.

16. **Clause 15** proposes to insert a new section 17A prohibiting the sale of tobacco products through hawking, from vehicles or through mobile vending, with a fine not exceeding fifty thousand shillings, imprisonment for a term not exceeding six months, or both.

17. **Clause 16** proposes to insert a new section 19A prohibiting the sale of tobacco products, including nicotine pouches and electronic nicotine delivery systems, through online platforms or any form of e-commerce, with a fine not exceeding five hundred thousand shillings, imprisonment for a term not exceeding three years, or both.

18. **Clause 17** proposes to insert a new section 20A requiring any person intending to manufacture, distribute, store, sell or otherwise deal in tobacco products to obtain a licence

from the respective county executive committee member, to deal only at the fixed location designated in the licence, to display the licence prominently and to deal only in conforming products. Further, contravention of the section attracts a fine not exceeding one hundred thousand shillings, imprisonment for a term not exceeding twelve months, or both.

19. **Clause 18** seeks to amend section 21 of the Act (packaging and labelling) by—
    (a) substituting subsection (2) to require every package to bear a health warning in English and Kiswahili covering seventy-five percent of the principal display areas on the front and back, printed in black text on a white background, and a statement of harmful constituents on the right-hand side of the package;
    (b) inserting subsection (2A) prohibiting the dispensing with or modification of those requirements, and prohibiting dealing in tobacco products that do not comply with plain packaging requirements prescribed by the Cabinet Secretary, and subsection (2B) barring the Cabinet Secretary from dispensing with or modifying the requirements in favour of any product or person;
    (c) providing that warning labels shall be prescribed by the Cabinet Secretary through regulations under section 53, rather than in the Schedule; and
    (d) increasing the fine under subsection (6) from five hundred thousand shillings to one million shillings.

20. **Clause 19** proposes to insert two new sections into the Act—
    (a) **section 21A** requires any person undertaking the manufacture, importation, sale or distribution of tobacco products to be registered by the Ministry responsible for health, with any registration fees payable into the Fund. Further, contravention of the section attracts a fine not exceeding three million shillings, imprisonment for a term not exceeding three years, or both; and
    (b) **section 21B** prohibits the manufacture, sale, distribution or importation of a tobacco product, its packaging, or a disposable electronic delivery system that uses single-use plastics, with a fine not exceeding ten million shillings, imprisonment for a term not exceeding five years, or both.

21. **Clause 20** seeks to amend section 25 of the Act to extend the prohibition on tobacco advertising to online and digital platforms, including social media and video-sharing platforms, and to advertising through influencers, brand ambassadors or similar entities.

22. **Clause 21** seeks to amend section 26(1) of the Act to prohibit offering or providing free samples of electronic nicotine delivery systems, nicotine pouches or related components as a promotional strategy.

23. **Clause 22** proposes to substitute section 33(2) of the Act to provide for two categories of smoke-free places—

(a) places where smoking is **permanently prohibited**, namely institutions of basic education and training; places of worship; hospitals and health institutions; children's homes, child care facilities and playgrounds; residential houses and other premises where children are cared for; public service vehicles, passenger vehicles, school buses, commercial passenger aircraft, commuter boats and ferries; and police cells; and

(b) places where smoking is prohibited **except in designated smoking areas**, namely offices and workplaces; court buildings; factories; cinema halls, theatres and entertainment facilities; restaurants, hotels and bars; prisons; police stations; aircraft, passenger ships and other public conveyances; other education facilities; railway stations, airports, ports and transport terminals; markets, malls and retail and wholesale establishments; stadia and recreational facilities; and public buildings.

24. The Clause also makes a consequential amendment to section 33(4) by substituting "Board" with "Committee".

25. **Clause 23** proposes to insert a new section 34A requiring a person who offers nicotine pouches or electronic nicotine delivery systems for sale to display, at the premises, warnings on the prohibition of sale to and use by persons under eighteen years, the specific health risks of the products, the nicotine content and risk of addiction and overdose, and that the products are not a safe alternative to traditional tobacco products.

26. **Clause 24** proposes to substitute section 35(2) of the Act to prescribe the standards for a designated smoking area, being a fully enclosed and separate room with a self-closing sealed door, and an independent ventilation system that exhausts air directly outside, maintains negative air pressure and is certified by a qualified engineer. The area is to be inaccessible to non-smokers during use, cleaned only when not in use, and clearly marked with signs in English and Kiswahili.

27. **Clause 25** proposes to amend section 36 of the Act by substituting references to the "Director of Medical Services" with the "Director-General for health", in line with the Health Act, Cap. 241.

28. **Clause 26** proposes to amend section 53 of the Act (regulations) by—

(a) requiring regulations to be made by the Cabinet Secretary on the recommendation of the Committee and in consultation with county governments;

(b) inserting a new subsection (1A) providing that regulations may prescribe permissible constituents in e-liquids, standards for batteries and electrical components, maximum toxicity and emission levels, testing for conformity, procedures for approval, withdrawal and recall of products, permitted additives, and health messages on packages; and

(c) inserting the words "the Council of County Governors and" in the introductory clause of subsection (2).

29. **Clause 27** proposes to delete the Schedule to the Act, which currently prescribes warning labels. Warning labels will instead be prescribed by regulations made under section 53.

CHAPTER FOUR: CONSIDERATION OF THE BILL BY THE COMMITTEE

4.0 Legal Provision on Public Participation

30. Article 118 (1) (b) of the Constitution of Kenya provides as follows—
"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

31. Standing Order 127(3) provides that—
"The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—
(a) inviting submission of memoranda;
(b) holding public hearings;
(c) consulting relevant stakeholders in a sector; and
(d) consulting experts on technical subjects.

32. Standing Order127(3A) further provides that—
"The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

4.1 Public Participation in the Review of the Bill

33. The Tobacco Control (Amendment) Bill 2024 (Senate Bill No. 35 of 2024), was published on **1st July, 2024** and passed by the Senate with amendments on **3rd March, 2026.** Pursuant to Standing Order 127(1), the Bill was referred to the Departmental Committee on Health after being read the First Time in the House on **Wednesday, 1st April 2026.**

34. Pursuant to the aforementioned provisions of the Constitution and the Standing Orders on public participation, the Committee, through local daily newspapers (Nation and Standard) of **Friday,10th April,2026,** published an advertisement inviting the public to submit memoranda on the Bill.

35. Further, vide letters dated **10th September, 2026**, the Committee invited the Ministries, Departments and Agencies (MDAs), Non-State Actors and the private sector players to appear before the Committee to submit their memoranda on the Bill. The Committee held meetings to consider their submissions on **Tuesday, 22nd and Wednesday, 23rd September, 2026**.

36. Lastly, the Committee, through local daily newspapers (The Daily Nation and the Star) of Wednesday, **16th September, 2026,** published an advertisement informing the public of public hearing *barazas* on the Bill in seven (7) counties. The hearings were held in Nairobi

County on **Thursday, 24th September, 2026** in Meru, Tharaka Nithi, Uasin Gishu and Bungoma Counties on **Friday, 25th September, 2026** and Kisumu and Laikipia Counties on **Saturday, 26th September, 2026.**

4.2 Submissions on the Bill

37. The Committee received written memoranda on the Bill. The Committee also held public hearings in seven (7) counties. The Committee received submissions from the following stakeholders:

1) The Ministry of Health (MoH)
2) The National Treasury
3) The Ministry of Investments, Trade and Industry, State Department for Industry
4) The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA)
5) The State Department for Micro, Small and Medium Enterprises (MSMEs) Development
6) The Office of the Attorney-General and Department of Justice
7) The Kenya Law Reform Commission (KLRC)
8) The Council of Governors (CoG)
9) The Kenya Revenue Authority (KRA)
10) The Anti-Counterfeit Authority (ACA)
11) The Kenya Bureau of Standards (KEBS)
12) The Pharmacy and Poisons Board
13) The National Quality Control Laboratory (NQCL)
14) The Kenya National Commission on Human Rights (KNCHR)
15) Sen. Catherine Muyeka Mumma, CBS, MP
16) Coulson Harney LLP
17) ADRA Advocates LLP
18) The Institute of Economic Affairs
19) The National Council of Churches of Kenya
20) The Kenya Private Sector Alliance
21) The Kenya Association of Manufacturers (KAM)
22) The Kenya National Chamber of Commerce and Industry (KNCCI)
23) The Pubs, Entertainment and Restaurants Association of Kenya (PERAK)
24) The Harm Reduction Society of Kenya
25) The Retail Trade Association of Kenya (RETRAK)
26) British American Tobacco Kenya PLC (BAT Kenya)
27) The Kenya Medical Association (KMA)
28) The Kenya Paediatric Association (KPA)
29) Tropikal Spaces Limited
30) Dentons Hamilton Harrison and Mathews Advocates
31) Dave Siganga, Advocate

32) Okwach and Company Advocates
33) Dr. Duncan Okubasu, PhD
34) Amollo Simba & Associates Advocates
35) Dr. Andrew Owuor, Lung and Respiratory Specialist at Kenyatta National Hospital
36) Professor Emeritus Prakit Vathesatogkit
37) Dr. Praneet Valodia
38) The Kenya Tobacco Control and Health Promotion Alliance (KETCA)
39) Development Gateway
40) Diplomats for Health in Resilient Community (DFH-RC)
41) Women Amplifying Voices Against Impunity CBO (WEKESWA)
42) Child Space Organization
43) The Nyandarua Cancer Support Group
44) The Network of TB Champions Kenya (NTBC-K)
45) The People Living with NCDs
46) Africa Cancer Foundation
47) Foresight Advisory Africa
48) Resolutions Recovery Centre
49) Faraja Cancer Support Trust
50) The Society of Community Health Caregivers (SOCHE)
51) Slum Child Foundation
52) Support Heal and Purpose to Elevate (SHAPE)
53) Elewa Ulevi Consultancy
54) The International Institute of Legislative Affairs
55) The National Taxpayers Association
56) The Students Campaign Against Drugs
57) The Non-Communicable Diseases Alliance Kenya
58) The Kenya Law Students Society
59) The Association of Public Health Officers
60) The Nova Life Society
61) The National Cancer Institute of Kenya
62) Kenyan Network of Cancer Organizations
63) Talk to Save the Youth Organisation
64) Kajiado County NCDs Chapter
65) Women for Cancer Early Detection and Treatment (Women 4 Cancer)
66) The African Institute for Health and Development (AIHD)
67) The Purple Heart Organization
68) Blue Cross Kenya
69) The Kiambu Cancer Support Group (KCSG)
70) Laikipia County Youth in Business
71) Ms. Whitney Odhiambo of Blue Cross Kenya Youth
72) Ms. Beatrice Bahati Mwendwa

73) Mr. Fredrick Mwangi of Kenyatta University
74) Mr. Henry Muema Ndata
75) Ms. Mercy Nduta Ndung'u
76) Mr. John Michael Obure Obure of Railway Ward, Kisumu
77) Mr. David Ogoro of the Kisumu County Deaf Association
78) Ms. Murigi Grace Njeri of Kenyatta University
79) Ms. Wanderi Nyawira, a pharmacy student at Kenyatta University
80) Mr. Caleb Ngala, Founder of Mathare Community Anti-Drugs and Alcohol Prevention Initiative
81) Ms. Phanice Muchina Makunda
82) Mr. Victor Karanja Ndegwa
83) Mr. Eric Kago of Nairobi
84) Ms. Amani Maria
85) Mr. Leone A. Otwoma
86) The Bars, Hotels and Liquor Traders Association of Kenya (BAHLITA)
87) Mr. Oliver Mathenge
88) Mr. Amos Kamau
89) Bunge la Mwananchi
90) Mr. Samuel Nyapara
91) TINADA Youth
92) The Elementaita Small Traders Association
93) The Kenya Scouts Association
94) The Institute of Certified Public Accountants of Kenya (ICPAK)
95) Mrs. Eva Kinyanjui of Tobacco Harm Reduction Caucus
96) Mr. Tonny Blair Omondi of Homa Bay County
97) Mr. Onyango George, a pharmacy student at Kenyatta University
98) Ms. Jackline Mbone Juma, a Public Health Officer from Kakamega
99) Mr. Edwinson Barasa Makunda
100) Mr. Honest Kawa
101) Ms. Ngala Marie Goretti
102) Talk to Save Youth CBO
103) Tobacco farmers from Bungoma County
104) SHAPE Organization

4.3 Clause-By-Clause Submissions

1) The Ministry of Health (MoH) submitted as follows:

38. Delete Clause 2.

Justification: The MOH argued that the definitions related to harm reduction are already addressed under section 2 of the Narcotic Drugs and Psychotropic Substances (Control) Act,

Cap. 245 and section 2 of the NACADA Act, Cap. 122. The operational scope of harm reduction is further embedded in NACADA's mandate under section 5 of Cap. 122.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

39. Delete Clause 3.

Justification: MOH submitted that section 5 of the NACADA Act, Cap. 122 already establishes a national framework for prevention, treatment and rehabilitation of substance use disorders, covering the objectives stated in the clause. Part V of the NACADA Act further provides for rehabilitation for persons with substance use disorder.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to regulate the use of electronic nicotine delivery systems and exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

40. **Clause 2: Amend the definition of the term 'authorised officer'** by inserting the following words immediately after "36": "including an authorised officer as defined under section 2 of the Tax Procedures Act."

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the inspection, entry and seizure powers under section 36 of the Tobacco Control Act relate to public health enforcement, which should remain with officers appointed under that section.

41. **Clause 7: Amend clause 7 by inserting the following new subsections immediately after sub-section (5):**

(6) Every manufacturer, importer, or distributor of tobacco products shall make a declaration of the solatium compensatory contribution due within thirty days of the publication of their audited accounts.

(7) Payment of the declared contribution shall be made not later than thirty days following the end of the quarter.

(8) Any person who fails to declare or pay the solatium compensatory contribution within the prescribed timelines commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty per cent of the dutiable value of the tobacco products involved, or both.

(9) Any person who knowingly makes, presents or uses false declarations, invoices, or other documents in relation to the solatium compensatory contribution commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings.

(10) A person who commits an offence under this Act in relation to the solatium compensatory contribution for which no specific penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings.

(11) Where any solatium compensatory contribution has been short-paid or erroneously refunded, the person who should have paid the amount short-paid or to whom the refund has erroneously been made shall, on demand by the authorised officer, pay the amount short-paid or repay the amount erroneously refunded, as the case may be; and any such amount may be recovered as if it were a contribution lawfully due under this Act.

(17) The Cabinet Secretary shall render a decision on the application within thirty days of receipt thereof and shall notify the applicant in writing stating reasons for the decision.

(18) Any person dissatisfied with the decision of the Cabinet Secretary under subsection (17) may appeal to the High Court within thirty days from the date the decision is made.

Justification: The proposed amendments take into account proposals made by KRA and are intended to facilitate the collection of the solatium compensatory contribution with a view towards providing timelines for declarations and payment of the solatium compensatory contribution in order to facilitate promptness, predictability and efficiency in the collection of the contribution; Establishment of offences, penalties and interests for the late or deferred declaration and payment of the contributions; and Establishment of a clear dispute resolution mechanism for matters arising from the collection of the contribution.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that matters relating to the declaration of taxes due be addressed under the relevant tax laws.

2) The National Treasury submitted as follows:

42. **Amend clause 5(d)** to limit the renewed tenure of the Chairperson of the Committee to three (3) years and not five (5) years as currently proposed in the Bill.

Committee Resolution: The Committee adopted the proposal. The Chairperson shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

43. **Amend clause 5(g)** by expanding it to read, "The expenses of the Committee shall be defrayed out of *not more than 3% of revenues projected to be received into the Fund (under section*

7) in any Financial Year, and out of monies appropriated by the National Assembly for that purpose.

Committee Resolution: The Committee adopted the proposal. The Committee noted that the amendment gives the Board a secure source of funding for its operations and enforcement functions. Further, capping the amount charged to the Fund at 3% of projected revenue keeps most of the Fund available for the purposes in section 7(4): research, documentation and dissemination of information, and national cessation and rehabilitation programmes.

44. **Amend section 7(4)(c) of the Principal Act** by expanding it to read, "any other matter incidental to the matters stated in paragraphs (a) and (b) *including the expenses of the Committee as stated under section 5(g).*

Committee Resolution: The Committee adopted the proposal. The amendment allows the Board's expenses to be met from the Fund.

45. **Amend section 8(1) of the Principal Act** by inserting the following wordings after the words "Officer administering the Fund", in accordance to the Public Finance Management Act (Cap 412A) section 24(4) - (13).

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the Fund shall be administered by the Chief Executive Officer of the Board in accordance with the Tobacco Control Act, the Public Finance Management Act, Cap. 412A, and other applicable laws.

46. Restore the Schedule as contained under the Act.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the Schedule to the Act currently prescribes warning labels. However, these warning labels will be prescribed by regulations made under section 53 pursuant to the proposed Clause 18(b) of the Bill. Clause 27 is therefore a consequential amendment.

3) The Ministry of Investments, Trade and Industry, State Department for Industry submitted as follows:

47. **Amend Section 3**; on definition of electronic cigarette, part (a). The State Department wants added "or any part of the body" immediately after "via a mouth piece".

Justification: They opine that this will cover all parts of the body including nose, blood veins, or other parts through which nicotine-containing vapour can be consumed.

Committee Resolution: The Committee adopted the proposal in part. The Committee noted that nicotine-containing vapour may be inhaled through the nose as well as through a mouthpiece, and resolved to amend paragraph (a) of the definition of "electronic cigarette" in Clause 3 by inserting the words "or nasal piece, or by any other means of inhalation" immediately after the words "via a mouth piece".

48. **Amend Section 5(2)** where the Bill refers to ex-officio members and expressly indicate that the membership defined in Section 5A(1) a-j are ex-officio members.
Justification: This will clearly define them to avoid speculation.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

49. **Amend Section 5A**; Provide for (j) to include a representative of the State department for Industry
Justification: The **Ministry** says that the State Department for Industry has a mandate to promote industrial manufacturing.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

50. **Amend Section 5(C)** which provides for the qualifications of the chairperson to include the qualifications of members contemplated in Section 5A (2).
Committee Resolution: The Committee adopted the proposal to include qualifications of Members similar to those of the Chairperson.

51. **Amend Section 5;** The State Department notes that the change from "Board" to "advisory committee" is a good idea considering that the functions of the Board as spelt out in Section 6 of the principal act were advisory in nature.
Justification: It would be better if the board was strengthened (with proposed reconstitution in Section 5A of the Bill) to move from advisory to full control of the whole tobacco ecosystem including; *tobacco, tobacco products manufacturing and trade of tobacco, access and consumption of tobacco and tobacco products,* both in terms of policy advisory, implementation, enforcement, monitoring, and evaluation.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

52. **Section 5A (1)**-they propose the composition of the committee members to include NACADA (National Authority for the Campaign Against Alcohol and Drug Abuse).
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

53. **Amend Section 7(b):** inserting the new paragraph instead of numbering the new paragraph as (aa), numbering it as paragraph (c). Then amend the whole numbering as appearing in the principal act in such a way that there will be Section 4 paragraphs a-d. Then amend Section 7

(4)(c) of the principal act to form new paragraph (d) and delete the letter *"b"* appearing immediately after *"and"* and substitute therefore with letter "c".

Justification: This will provide more clarity for users of the Bill and to the public who are not experts in matters law.

Committee Resolution: The Committee noted the support for the proposed amendment.

54. **Amend 14D (1)** to include a schedule in the Bill to provide for a standard format that has all these details.

Justification: This will clearly show how the information should be arranged/submitted/appear.

Committee Resolution: The Committee noted the support for the proposed amendment.

55. **Amend Section 14 (1) and (2);** to provide that samples be submitted to KEBS first, then KEBS be given a timeline to submit its report to the Cabinet Secretary and the manufacturer simultaneously.

Justification: The manufacturer will apply for the approval after the process.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

56. **Amend Section 14F**, proposed that where the Cabinet Secretary fails to communicate the decision on approval within the stipulated timelines, then, the product shall be deemed approved

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that deemed approval of nicotine products that have not been assessed would defeat the purpose of the approval regime and the protection of public health and any such delay that may occur is remedied through Article 47 of the Constitution and the Fair Administrative Action Act, Cap. 7L.

57. **Amend Section 22(a)** whereby the Bill provides for prohibitions. The Ministry notes that it however does not compel the developers/managers of those facilities to provide designated smoking areas. It only leaves it to their discretion as seen in Section 35(1) of the principal act.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that owners of premises may choose not to permit smoking on their premises, and that the Act should therefore not require a designated smoking area to be established in every premises.

58. **Amend section 23.** They propose replacing 34(1)(c) high concentration liquids with high concentration nicotine liquids

Justification: None offered.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to include the words high concentration nicotine liquids for clarity purposes.

4) **The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) from branches in Laikipia, Tharaka-Nithi and Meru Counties, submitted as follows:**

59. **Amend the title of the Bill** to read: "An Act of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: NACADA submitted this brings the title in line with the substances and products expressly dealt with in the Bill.
Committee Resolution: The Committee adopted the proposal in part. The Committee noted that the Bill prohibits nicotine pouches under proposed section 14B and the new definition of "tobacco product" includes any product containing nicotine from any source, or nicotine analogues, used by "sucking or any other means".

60. **Amend Clause 3** (definition of "nicotine pouch" in section 2) by keeping and refining the definition for enforcement clarity, deleting proposed section 14B in its current form and replacing it with an express prohibition on nicotine pouches (see (m) below), and deleting the consequential references in Clauses 16 and 23 and in any other clause that regulates, permits or assumes the lawful sale or display of nicotine pouches, including in the provisions on online sales and retail warnings, except where a reference is needed for seizure, enforcement or offence provisions.
Justification: NACADA submitted a prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to hide, easy to use in smoke-free places, and often sold in flavours and formats that raise youth appeal and the risk of addiction. It noted that WHO has identified pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free", which may mislead consumers about risk, and that WHO has called for urgent bans on flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and deepen dependence, especially among children and young people. Keeping a clear definition while banning the product closes loopholes, supports seizure and prosecution, and stops the law from normalising a new addictive consumer product.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

61. **Amend Clause 3** (definition of "ingredients") by retaining the expanded definition, but expressly adding "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use", and requiring disclosure of device component emissions.

Justification: NACADA argued that the definition should go beyond the ingredients physically present in the product at the point of sale. For new nicotine products, the main risks come from what is produced during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition would let industry argue that only the liquid or pouch contents matter, even where the inhaled aerosol contains additional toxicants. It submitted that regulating both product contents and the disclosure of emissions and contaminants released in normal use matches modern product regulation and makes later standards on testing, approvals and recalls safer in law.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

62. **Amend Clause 3** to reject the shorter replacement definition of "advertisement", keep the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics."

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

63. **Amend Clause 3** by inserting new definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha" and "shisha smoking".

Justification: NACADA submitted the new definitions are intended to close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

64. **Amend Clause 3** (definition of "smoking") by keeping the revised definition but making it explicit that it covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.

Justification: NACADA submitted the definition should close the common loophole where sellers market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. It noted the WHO position that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents

easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

65. **Amend Clause 3** (definitions of "tobacco product" and "characterising flavour") by keeping them but defining nicotine analogues functionally, and by extending "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and descriptors such as "ice", "fresh", "cool", "chill" and "smooth" or similar words.

Justification: NACADA submitted industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for bans on ingredients that increase attractiveness and palatability. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

66. **Amend Clause 5** (Tobacco Control Advisory Committee) by including the Chief Executive Officer of NACADA or a nominee of the Chief Executive Officer as a member.

Justification: NACADA submitted that, given its complementary role in advancing tobacco control efforts in Kenya, particularly in strengthening demand reduction initiatives and supporting enforcement measures, it is well placed, as the national focal point for drug and substance use programmes, to drive a coordinated, multisectoral approach within Government. It added that its well-established structures at national and county levels provide a platform for mainstreaming tobacco control interventions within existing systems and frameworks.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

67. **Amend Clause 5** (Tobacco Control Advisory Committee) by removing the seat for a Kenya National Chamber of Commerce and Industry or business representative, and adding mandatory public disclosure of interests, minutes, agendas and all meetings with industry, a ban on gifts, partnerships and non-essential contact, and recusals backed by sanctions. Require

the Cabinet Secretary for Health to nominate the person representing non-governmental organisations involved in tobacco control.

Justification: The business seat a structural weakness. It argued that tobacco control is not an ordinary sector, because the tobacco industry has a direct commercial interest in weakening measures that reduce demand. It noted that Article 5.3 of the FCTC requires public health policies to be protected from the commercial and other vested interests of the tobacco industry. The conflict-of-interest wording in the Bill is useful but not enough if the Committee still has a seat with an industry link. The safer course is to remove the seat and to write transparency, limited interactions and enforceable recusals into the law. It added that the Supreme Court has already upheld strong tobacco control regulations, including limits on contact between public authorities and the industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

68. **Amend Clause 7** (solatium, or compensatory, contribution) by setting a statutory floor of not less than 2 per cent of the ex-factory value or import value of tobacco and nicotine products, with power to set a higher rate by regulation, and by requiring annual publication of collections and of how the Tobacco Control Fund is used. Amend section 7(4) to state expressly that the Fund covers research, cessation and rehabilitation, public education and awareness, and enforcement support. Insert a new subsection providing for regulations on disbursement of the Fund by the Cabinet Secretary, under the Tobacco Control Act, to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumber the present subsection (5) as subsection (6).

Justification: Leaving the amount of the contribution open invites lobbying and leaves the Fund open to under-financing. It noted that Kenya already has a workable 2 per cent benchmark in its regulatory history, and that the Supreme Court upheld the wider tobacco control framework and rejected the claim that the solatium was unconstitutional as such. A floor gives predictability for prevention, cessation, enforcement and treatment of tobacco-related disease, and leaves less room for the rate to be watered down through administrative pressure. Public reporting is needed so that the Fund is visibly tied to health protection and is not treated as a negotiable levy. On disbursement, NACADA submitted the Fund is a statutory fund set up under the Tobacco Control Act, run within the health framework and aimed at research, cessation, public education and enforcement. Because the Act already places implementation and regulation in the health sector, the Cabinet Secretary for Health is the most suitable authority to set the criteria, eligible recipients, reporting duties and accountability safeguards, while the Fund stays subject to the wider public finance framework.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require

that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

69. **Amend Clause 10** (tax and price policies) by keeping and strengthening it: require that tobacco taxes rise to at least 75 per cent of the retail price, with yearly adjustment for inflation and income growth, and set aside a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the single most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. It noted that WHO treats taxes above 75 per cent of the price as the highest standard and stresses the need to keep up pressure on affordability over time. If taxes are not linked to both inflation and income growth, products become cheaper in real terms and access by young people rises. Earmarking revenue also answers an implementation problem, since strong laws fail when enforcement, cessation and monitoring go unfunded.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

70. **Amend Clause 12** (new section 14A on ENDS and e-cigarettes) by taking the strongest public health position: prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems (ENDS and ENNDS) as consumer products. In the alternative, if Parliament keeps them, allow only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, sale only through licensed adult-only outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: The present text normalises market entry for an addictive product class whose public health risks remain substantial. It noted the WHO position that e-cigarettes are harmful and not safe, expose bystanders to harmful aerosol, and are linked to much higher uptake of conventional cigarettes among non-smoking youth. It submitted the European Union limits (20 mg/mL, 10 mL and 2 mL) are a minimum, not a best-practice ceiling, that several developed countries have gone further by restricting flavours, sales channels or device types, and that

both the United Kingdom and Belgium have banned disposable vapes. Kenya should not lock a permissive baseline into primary legislation.

Committee Resolution: The Committee adopted the proposal in part. The Committee noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade. The Committee further noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

71. **Amend Clause 12** (new section 14B on nicotine pouches) by deleting the section, which now allows pouches subject to child-proofing, dose consistency and a cap of 20 mg per pouch, and replacing it with: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes this law commits an offence punishable by a fine of up to one million shillings, imprisonment of up to two years, or both. In the alternative, if pouches are not prohibited, regulate them exactly like tobacco products, ban flavours, require plain packaging, prohibit displays and online sales, and cut the maximum nicotine content to not more than 4 mg per pouch.

Justification: Nicotine pouches are designed for discreet use, are easy to hide, and are sold in flavours and formats that strongly appeal to adolescents and young adults. It argued that high-dose pouches speed up dependence and give a false image of a cleaner, lower-risk product, even though the risk of addiction remains substantial. It noted research showing that a sizeable minority of young adults are willing to try nicotine pouches, and that exposure to advertising and favourable perceptions are major drivers of use. If Parliament does not ban pouches, it should at least refuse a 20 mg cap and regulate them as strictly as other nicotine products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

72. **Amend Clause 12** (new sections 14C to 14I on approval, testing, listing and bans) by keeping and strengthening them, requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approving or refusing a product, and a clear appeal and recall process.

Justification: This is the strongest parts of the Bill, which should be defended. However, a product approval regime without public reasons and independent verification can still be captured or become opaque. The burden should stay on the manufacturer to prove safety, conformity and legal compliance before a product enters the market and throughout its life. A public register supports consumer protection, customs enforcement and county licensing, and independent testing is especially important for the novel nicotine products because industry-submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal with amendmends. The Committee resolved that written reasons shall accompany refusal decisions, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved

and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

73. **Amend Clause 12** (new section 14J on additives and characterising flavours) by keeping and strengthening it so that it expressly covers menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.
Justification: NACADA submitted this clause should be defended as a core youth protection measure. WHO and the FCTC Secretariat now openly call for urgent action against flavours and other design features that make products more attractive and easier to use. Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. A comprehensive ban must therefore be based on sensory effect and not merely on names. It noted that the Netherlands' move to tobacco-flavour-only e-liquids and Belgium's move toward tighter vape controls show that developed countries are moving in the same direction.
Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

74. **Amend Clause 13** (section 15 on youth-appealing designs and the sales buffer) by keeping the design prohibition and increasing the minimum sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children, and by replacing "eighteen" with "twenty-one" in section 15(1), (3), (5)(a), (5)(b) and (5A).
Justification: NACADA submitted the design ban is sound and should be preserved. The distance buffer, however, is too low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children. It noted that Kenya already recognises a 300-metre public-health buffer for learning institutions in the Alcoholic Drinks Control Act, and that using the same benchmark here improves coherence in child protection legislation, gives administrators and courts a familiar standard, and reduces retailer clustering and the routine normalisation of nicotine products near schools. On the age threshold, NACADA submitted the National Policy for the Prevention, Management and Control of Alcohol, Drugs and Substance Abuse (2025) provides for raising the minimum legal age from 18 to 21 years, and that a similar measure should be applied to tobacco and nicotine products. It added that the proposal is in line with forward-looking measures adopted by Member States during the 2026 session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control, which strengthen protection of young people against tobacco and nicotine use.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a

person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

75. **Amend Clause 16** (new section 19A on online sales) by keeping and strengthening it, so that platform operators, payment intermediaries and delivery services must remove or block unlawful listings, keep transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: NACADA submitted a simple ban is necessary but not enough. Online sales of tobacco and vapes often move to social media, messaging channels, cross-border websites and intermediary platforms, and without duties on platforms, traceability and takedown rules, enforcement is reactive and uneven. It noted that Belgium reports strong enforcement against unlawful online vape sales, and that the Netherlands bans cross-border online sales of tobacco and e-cigarette products. Kenya should legislate the whole enforcement chain and not only the banned act.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

76. **Amend Clauses 17 and 19 (**county licensing of premises and national registration of dealers) by keeping both, but requiring a unified digital application portal, harmonised data-sharing, annual renewal, disclosure of beneficial ownership, controls on how many retailers may operate in an area, and mandatory publication of suspensions and revocations.
Justification: NACADA submitted having both county licensing and national registration is defensible, because it gives local and national authorities a view of the whole supply chain. The risk is fragmentation, duplication and forum-shopping unless the law requires information-sharing and joint administration. Disclosure of beneficial ownership and publication of licence decisions help to identify front companies, repeat offenders and retail networks linked to industry. This also fits the supply-chain controls in the Illicit Trade Protocol, which treats licensing, record-keeping and traceability as core tools against diversion.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

77. **Amend Clauses 18 and 23** (pack warnings, plain packaging and retail warnings) by defending the 75 per cent warning rule and the power to require plain packaging, extending large pictorial warnings and standardised packaging to ENDS and nicotine pouches, requiring a quitline or cessation message and a poison warning for liquid nicotine, and prohibiting any branded display or menu-board style counter signage at retail.
Justification: NACADA called this a major public health gain that should not be watered down in the National Assembly. It noted that WHO guidance under Article 11 of the FCTC treats large, clear and prominent warnings as essential and accepts plain packaging as a legitimate way to reduce a product's appeal and stop the pack from acting as advertising.

Evidence reviews, including Cochrane, support the view that standardised packaging reduces appeal and may help lower smoking rates. New products should not keep strong branding just because they sit outside the usual cigarette packaging rules.

Committee Resolution: The Committee adopted the proposal. The 75% front-and-back health warning and the plain-packaging in Clause 18, and the point-of-sale warnings in Clause 23, are retained and apply to electronic nicotine delivery systems as provided in the Bill.

78. **Amend Clauses 20 and 21** (digital and indirect advertising and promotion) by expanding them into a full ban on tobacco advertising, promotion and sponsorship (TAPS), covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and visibility at the point of sale.

Justification: NACADA submitted this should be treated as a modern Article 13 clause and not a narrow social media amendment. Industry now markets through creators, event culture, sponsorship, discounts, product seeding, hashtag campaigns and indirect brand extension, so a partial digital ban would be outpaced almost at once. The Article 13 guidelines favour a comprehensive ban because partial bans only move promotion from one channel to another. It added that the WHO 2025 campaign focused on how flavours, design and marketing tactics are used to addict young people and make nicotine use seem normal.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

79. **Amend Clauses 22 and 24** (smoke-free places and designated smoking areas) by deleting the designated smoking area (DSA) exception entirely and requiring 100 per cent smoke-free and vape-free indoor and enclosed public places, workplaces, public transport and hospitality venues, with set outdoor smoke-free and vape-free perimeters around schools, hospitals, playgrounds and public building entrances. In the alternative, if DSAs are kept, remove aircraft from any place where a DSA may be allowed, and amend section 35(2)(b)(iii) so that a DSA needs approval by the county public health officer, with inspection and approval fees, as well as certification by a qualified engineer.

Justification: NACADA called this the clearest place where the Bill still falls short of best practice. It submitted the Article 8 guidelines are firm that there is no safe level of exposure to tobacco smoke, and that ventilation, filtration and designated rooms do not protect people effectively. Once ENDS and heated products are included, keeping designated rooms becomes an enforcement fiction, because aerosol drift, leakage and worker exposure remain. It noted that the Netherlands has rejected smoking rooms because they make smoking easier and normalise it. No separate justification was given for the alternative proposals on aircraft and on approval by the county public health officer.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that no designated smoking area shall be permitted on aircraft.

80. **Amend Clause 19** (new section 21B on single-use plastics and disposable products) by keeping and strengthening it; expressly ban disposable vapes as a class of product, require take-back and producer-responsibility duties for batteries and device waste, and allow seizure and destruction of non-compliant stock.
Justification: NACADA called this a strong environmental health clause that should be defended. It submitted disposable vapes are built for cheap uptake, easy concealment and repeat purchase, and create avoidable plastic, metal, lithium-battery and nicotine waste. It noted that the United Kingdom bans single-use vapes and Belgium has banned the sale of disposable e-cigarettes. Kenya should state the environmental reason clearly and link it to health enforcement powers, so that the clause is not reduced to a symbolic waste measure.
Committee Resolution: The Committee noted the support on the amendment on the ban on single-use plastics in ENDS.

81. **Insert a new section 21C** prohibiting the manufacture, sale, distribution and importation of shisha products, with a penalty of up to KES 5 million, imprisonment of up to 3 years, or both.
Justification: NACADA submitted the new section complements the proposed new definitions of shisha. The Bill has no express prohibition on shisha products.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban shisha and nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products..

82. **Amend Clause 26** (section 53 on the power to make regulations) by expanding it to allow track-and-trace, due diligence, caps on retailer density, mandatory record-keeping, public registers, seizure and destruction, environmental duties, rules on standardised packaging, and an express bar on handing state regulatory functions to the tobacco industry.
Justification: NACADA submitted section 53 should be written as the enforcement engine of the Bill. The more clearly Parliament authorises disclosure, traceability, recall, seizure, packaging and supply-chain controls, the harder it will be to challenge later regulations as beyond the law. It noted that the Illicit Trade Protocol treats licensing, record-keeping, due diligence, tracking and tracing as state functions, and submitted an express bar on delegation is prudent because industry-controlled tracing or compliance systems create the very conflict that Article 5.3 of the FCTC seeks to avoid.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

5) The State Department for Micro, Small and Medium Enterprises (MSMEs) Development submitted as follows:

83. **Clause 2 (Replacement of the Board with an Advisory Committee):** Retain the "Board" but strengthen its independence and autonomy through amended provisions rather than downgrading its status.

Justification: A purely advisory committee may not be able to enforce compliance effectively.
Committee Resolution: The Committee adopted the proposal. The Committee observed that re-establishing the Tobacco Control Board as a Tobacco Control Advisory Committee would weaken the governance, accountability and enforcement structure established under the Act. The Committee therefore resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

84. **Clause 3(a) (Deletion of the definition of "Board")**: Insert a transitional clause preserving the Board until the Committee is constituted.
Justification: This avoids a regulatory vacuum during the institutional transition.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

85. **Clause 3(g) (Definition of "smoking" to include vapour and electronic delivery systems)**: Insert a provision requiring the Ministry to issue compliance guidelines for vaping products within 90 days.
Justification: provides certainty for businesses entering the vaping market.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to provide a reasonable transitional period within which persons dealing in vaping products shall comply with the Act and the regulations while noting that section 53 of the Act already empowers the Cabinet Secretary to make regulations on the recommendation of the Board.

86. **Clause 3(h) (Definition of "tobacco product")** Align the definitions with the existing ones, and harmonise the regulatory frameworks to avoid duplication with KEBS and Excise Duty requirements.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to align the existing definitions in law and harmonise the regulatory frameworks to avoid duplication with KEBS and Excise Duty requirements

87. **Clause 3(i) (New definitions, including "advertisement")** Retain the broader definition from the parent Act, or explicitly state that the new definition is additional to the existing definition.
Justification: The parent Act's definition covers product stacking, displays and brand elements, which the new definition omits.
Committee Resolution: The Committee adopted the proposal. The Committee resolved that the existing broad definition of "advertisement" in the Act shall be retained.

88. **Clause 4(c) (New paragraph (f) on manufacture, sale, distribution and importation of non-compliant products)** Consolidate compliance requirements under section 14 rather than creating parallel provisions.
Justification: This avoids duplication and confusion for MSMEs.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the powers of the Cabinet Secretary should be assigned to the Board limiting the Cabinet Secretary functions to issuing policy guidelines and direction under the Act. The Committee further resolved to provide that the Board shall have power to prohibit the manufacture, sale, distribution or importation of a tobacco product that does not comply with the provisions of the Act.

89. **Clause 5 (Replacement of section 5 with a Committee)** Retain the Board with enhanced autonomy. If restructuring is necessary, provide clear justification and transitional provisions.
Justification: The Board's functions under section 6 include advising on policy, regulations and fund administration. These functions require decision-making authority that an advisory committee may lack.
Committee Resolution: The Committee adopted the proposal. The Committee observed that re-establishing the Tobacco Control Board as a Tobacco Control Advisory Committee would weaken the governance, accountability and enforcement structure established under the Act. The Committee therefore resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

90. **Clause 5A (Membership of the Committee)** Add explicit representation for MSMEs through the State Department for MSME Development or MSEA.
Justification: MSMEs are the primary retailers of tobacco products and will be most affected by the regulations.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

91. **Clause 5B (Disqualification from Committee membership)** Retain as drafted.
Justification: This is consistent with WHO FCTC Article 5.3.
Committee Resolution: The Committee noted the support for the proposed amendment in the Bill.

92. **Clause 5C (Qualification of the Chairperson)** Retain the 15-year requirement from the parent Act.
Justification: The parent Act's 15-year requirement ensures adequate experience for this critical regulatory role.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

93. **Clause 7(a) (Solatium contribution to the Tobacco Control Fund)** Clarify that the solatium applies only to licensed manufacturers and importers, and not to small-scale retailers.
Justification: This ensures MSME retailers are not inadvertently captured by the solatium requirement.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under the proposed new Section 7(2)(f) of the Tobacco Control Act, Cap. 245A, the solatium compensatory contribution is payable by manufacturers and importers.

94. **Clause 8 (Annual report on research activities)** Support as drafted.
Justification: This enhances accountability in the use of public funds.
Committee Resolution: The Committee noted the support for the proposed amendment in the Bill.

95. **Clause 9 (Replacement of "local authority" with "county government")** Support as drafted.
Justification: This corrects the terminology to reflect the devolved structure.
Committee Resolution: The Committee noted the support for the proposed amendment in the Bill.

96. **Clause 10 (Tax and price policies)**
Conduct a regulatory impact assessment on the impact on MSMEs before implementation.
Justification: The KNCCI has warned that increased taxation could lead to a surge in illicit trade, harming legitimate MSMEs.
Committee Resolution: The Committee noted that the Statutory Instruments Act, Cap. 2A requires regulatory impact assessment and public consultation before regulations of significant impact are made.

97. **Clause 11 (Insertion of "product" after "tobacco")** Support as drafted.
Justification: This is a minor drafting improvement.
Committee Resolution: The Committee noted the support for the proposed amendment in the Bill.

98. **Clause 12 (New sections 14A–14J on e-cigarettes, vapes and nicotine pouches** Introduce tiered compliance requirements based on enterprise size, and establish a simplified approval pathway for MSMEs.
Justification: MSMEs lack the resources for extensive testing and approval processes. A simplified pathway would encourage formalisation.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that product safety and approval requirements must apply uniformly to all manufacturers and importers to safeguard public health and the approval procedure will be prescribed through regulations.

99. **Clause 13 (Tobacco-like objects)** Provide clear guidance on what constitutes "resemblance" to tobacco products.
Justification: This avoids unintended consequences for MSMEs in the confectionery and toy sectors.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that further guidance on what constitutes resemblance to tobacco products be provided by the Cabinet Secretary through regulations made under section 53 of the Act, in consultation with stakeholders, including MSMEs in the confectionery and toy sectors.

100. **Clause 15 (New section 17A prohibiting hawking and mobile vending)** Provide a transition period and alternative livelihood support for affected hawkers.
Justification: The KNCCI and traders have warned that such restrictions could increase illicit trade.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that providing for a transitional period for hawking and mobile vending would compromise enforcement and implementation of the Act.

101. **Clause 16 (New section 19A prohibiting online sales)** Introduce a regulated online sales framework with age verification requirements.
Justification: Prohibition is less effective than regulation. A controlled framework would protect public health while allowing legitimate businesses to operate.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

102. **Clause 17 (New section 20A on county licensing of premises)** Limit county licensing to retail premises. Manufacturers and importers should be regulated nationally.
Justification: The KNCCI recommended that retail trade remain under existing county licensing frameworks.
Committee Resolution: The Committee adopted the proposal in part. The Committee noted that trade licensing and public health regulation are county functions under the Fourth Schedule to the Constitution. The Committee did not adopt mutual recognition of licences across counties. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

103. **Clause 18 (Section 21 on packaging and labelling, 75% warning)** Provide a transition period and technical support for MSMEs to comply.
Justification: The WHO has recognised Kenya's pictorial warnings. The increase to 75% is progressive but costly for small businesses.
Committee Resolution: The Committee adopted the proposal in part. The 75% front-and-back health warning in Clause 18 is retained. The Committee resolved that a transitional period shall be provided to allow stock lawfully on the market before commencement to be sold or withdrawn

104. **Clause 19 (New section 21A on registration of dealers with the Ministry of Health)** Integrate registration with the existing Business Registration Service platform.
Justification: This streamlines compliance and reduces the administrative burden on MSMEs.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the manner of registration is an implementation matter that shall be addressed through regulations made by the Cabinet Secretary.

105. **Clause 19 (New section 21B prohibiting single-use plastics in packaging)** Provide incentives for MSMEs to adopt eco-friendly packaging.
Justification: This balances environmental objectives with MSME sustainability.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the provision of incentives, including tax relief, is a fiscal matter that falls within the ambit of the relevant tax and public finance laws and is outside the scope of this Bill.

106. **Clause 20 (Section 25 on promotion and advertisement, including online and digital)** Develop digital platform guidelines for compliance and enforcement.
Justification: This addresses the reality of modern marketing while ensuring enforceability.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that development of digital platform guidelines for compliance and enforcement shall be addressed through regulations made by the Cabinet Secretary.

107. **Clause 21 (Section 26 on sponsorship and free samples)** Support as drafted.
Justification: This is consistent with the WHO FCTC.
Committee Resolution: The Committee noted the support for the proposed amendment in the Bill.

108. **Clause 22 (Section 33 on prohibited smoking areas, two-tier system)** Provide technical guidance and transition support for hospitality MSMEs.
Justification: The hospitality sector, which is largely made up of MSMEs, needs support to comply with the new requirements.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that a designated smoking area is optional and the owner of a premises may opt not

to permit smoking until they are able to comply with the requirements for a designated smoking area under the Act.

109. **Clause 23 (New section 34A on warning requirements for nicotine pouches and e-cigarettes)** Provide standardised warning materials free of charge to small retailers.
Justification: This reduces the cost burden on MSMEs while ensuring compliance.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the format, size and placement of point-of-sale warnings shall be prescribed in regulations, and the Bill shall provide a reasonable transitional period for compliance.

110. **Clause 24 (Section 35 on designated smoking areas)** Provide tiered requirements based on establishment size.
Justification: This avoids imposing disproportionate burdens on small businesses.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that that the requirements for a designated smoking area are intended to protect public health and must apply uniformly, regardless of the size of the establishment.

111. **Clause 25 (Section 36 on authorised officers)** Support as drafted.
Justification: This aligns with the current institutional framework.
Committee Resolution: The Committee noted the support for the proposed amendment in the Bill.

112. **Clause 26 (Section 53 on regulations)** Support as drafted.
Justification: This aligns with the Intergovernmental Relations Act.
Committee Resolution: The Committee noted the support for the proposed amendment in the Bill.

113. **Clause 27 (Deletion of the Schedule on health messages):** Retain the minimum requirements in the principal Act.
Justification: This ensures parliamentary oversight of public health messaging.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the Schedule to the Act currently prescribes warning labels and these warning labels will be prescribed by regulations made under section 53 pursuant to the proposed Clause 18(b) of the Bill. Clause 27 is therefore a consequential amendment.

6) The Office of the Attorney-General and Department of Justice submitted as follows:

114. **Amend Clause 3** paragraph (h) in the proposed new definition of "tobacco product", the term nicotine analogues is technical and ought to be defined.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to insert a definition of "nicotine analogue" in Clause 3.

115. **Amend Clause 5** in the proposed new section 5A, to delete the words, "chief executive officer" and substitute therefor the words, Chief Executive Officer"
Justification: The Office says that this is an editorial correction.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

116. **Amend Clause 5** in the proposed new section 5H. by deleting the words, by the Cabinet Secretary responsible for matters relating to Health, "such allowances as may be determined by the Cabinet Secretary"
Justification: This will align the provision with the definition "Cabinet Secretary" found in section 2 of the principal Act.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

117. **Amend Clause** 12 in the proposed new section 14A, in subsection (1)(c), delete the expression "14E" and substitute therefor the expression "14J"
Justification: This is to correct the cross-referencing.
Committee Resolution: The Committee adopted the proposal to **correct the cross-referencing.**

7) The Kenya Law Reform Commission (KLRC) submitted as follows:

118. **Clause 3 (definition of "advertisement"):** Delete the proposed definition of the term "advertisement".
Justification: The principal Act already adequately defines the term. A term cannot be defined twice in the same piece of legislation. A second definition may cause ambiguity or confusion as to the meaning of the term.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to delete in the Bill the proposed new definition of the term "advertisement" as it has already been defined in the Act.

119. **Clause 3: Delete paragraph 3(i)(a) and substitute the following definition:** "Characterising flavour" means a smell or taste other than one of tobacco which results from an additive or combination of additives, including fruits, spice, herbs, alcohol, candy, menthol or related flavours.
Justification: The term "clearly noticeable" is subjective. Its use in the definition may weaken the need to ban flavours that make tobacco, nicotine and related products less unattractive and appealing.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to delete the words "clearly noticeable" as the words are vague and may lead to challenges in enforcement and implementation of the Act.

120. **Clause 5, proposed section 5D (1) (tenure of the Chairperson):** Delete the word "five" and substitute the word "three". The clause should read: "The Chairperson shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years."
Justification: The word "five" is a typographical error.
Committee Resolution: The Committee adopted the proposal. The Committee resolved that the Chairperson shall hold office for a term of three years.

121. **Clause 14A, new paragraph 14A(h):** Insert a new paragraph 14A(h) to read: "The system and refill container shall have a conspicuous graphic health warning in accordance with sections 21 and 34A of this Act." The warning follows the stipulations in clauses 18 and 23 of the Bill.
Justification: The provision is necessary to dissuade consumers from using electronic nicotine delivery systems and to reduce addiction.
Committee Resolution: The Committee adopted the proposal. The Committee resolved that the refillable containers shall also comply with the packaging requirements proposed in clause 21 and 34A.

122. **Clause 14B, new paragraph 14B(d):** Insert a new paragraph 14B(d) to read: "(d) the pouches have a conspicuous graphic health warning in accordance with sections 21 and 34A of this Act." The warning follows the stipulations in clauses 18 and 23 of the Bill.
Justification: The provision is necessary to dissuade consumers from using nicotine pouches and to reduce addiction.
Committee Resolution: The Committee adopted the proposal. However, the Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

123. **Clause 22 (smoking in public places):** Delete clause 22.
Justification: Clause 22(2)(b)(viii) allows smoking in designated smoking areas in aircraft, passenger ships and other vehicles. This contradicts clause 22(2)(a)(vi), which permanently prohibits smoking in public service vehicles, school buses, passenger vehicles, passenger ships, aircraft, commuter boats and ferries. It is necessary to permanently prohibit smoking in these places to curb the use of tobacco products and their adverse effects.
Committee Resolution: The Committee adopted the proposal. The Committee resolved that smoking should not be allowed on aircraft.

8) The Council of Governors submitted as follows:

124. **Amend Clause 5A(1) (Tobacco Control Advisory Committee)** by deleting paragraph (e) and substitute therefor the following new paragraph: (e) a County Executive Committee Member responsible for Health nominated by the Council of Governors or a designated representative.

Justification: Ensures continuity and institutional representation of all counties irrespective of changes in committee leadership. It is also consistent with COG's statutory role as the intergovernmental coordinating body.

Committee Resolution: The Committee adopted the proposal with amendment. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill. The Committee resolved to have the County Executive Committee Member responsible for Health nominated by the Council of Governors or a designated representative on the Board.

125. **Amend Clause 7 (Tobacco Control Fund)** by inserting the following new paragraph immediately after clause 7(4)(aa):

> "(ab) supporting county governments in the prevention, surveillance, treatment and management of tobacco-related illnesses through conditional allocations and other intergovernmental financing mechanisms established in accordance with the Constitution and applicable public finance laws."

Justification: Art. 187(2)(b) requires that constitutional responsibility for the performance of a function remains with the government to which it is assigned, and that reasonable arrangements must be made to ensure that the resources necessary for the performance of that function follow the function. The Fourth Schedule (Part 2(2)) outlines devolved health functions (including county health facilities, pharmacies, ambulance services and primary health care). Financing the clinical and tertiary treatment of chronic diseases caused by tobacco directly impacts county health budgets. Article 202(2) of the Constitution explicitly empowers the National Government to provide additional conditional or unconditional allocations to county governments out of its share of national revenue to support specific subnational service delivery mandates.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

126. **Amend Clause 12-14(J) (Novel Nicotine Products)** on novel nicotine products by inserting the following new section: "The Cabinet Secretary shall, in consultation with county governments, establish mechanisms for technical support, laboratory testing, surveillance and enforcement coordination for purposes of implementing this Act".

Justification: Ensures effective implementation and avoids creating unfunded enforcement mandates on counties.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under Article 6(2) of the Constitution, the national and county governments are distinct and interdependent. The Committee resolved that any cooperation between the two levels of government, including technical support, should be undertaken voluntarily through the existing intergovernmental structures in line with the Constitution and the Intergovernmental Relations Act, Cap. 265F.

127. **Amend Clause 17 (Licensing by counties) by deleting sub-clause (1) and substituting therefor the following sub-clause** - A person intending to manufacture, distribute, store, sell or otherwise deal in tobacco products shall obtain a license from the county government in accordance with the applicable county licensing framework and any standards prescribed under this Act. Further **Insert the following new sub-section immediately after subsection (1):** A license issued under this section may be administered through a county licensing framework established under county legislation, including a Single Business Permit system or any successor licensing framework.
Justification: The Bill currently refers to the respective CECM without identifying the portfolio responsible for the issuance of licenses. County Governments have different administrative arrangements for trade licensing, public health regulation and revenue administration. The provision should therefore preserve flexibility by vesting the licensing function in the county government through county legislation rather than by a specified CECM. Further preserves county autonomy in determining administrative structures while maintaining uniform public health standards.
Committee Resolution: The Committee adopted the proposal in part. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures and timelines for issuing licences are a matter for county legislation.

128. **Amend Clause 19 (Registration of Dealers)** by inserting the following new sub-section immediately after section 21A(2): (2A) In prescribing the conditions and manner of registration under this section, the Cabinet Secretary shall ensure that the registration framework is interoperable with county licensing systems established under this Act and county legislation so as to avoid duplication of regulatory requirements.
Justification: Avoids duplication, regulatory inefficiencies and increased compliance costs. For administrative efficiency and ease of doing business within counties.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

129. **Amend Clause 22 (Smoking Restrictions) by inserting the following new sub-section:** The implementation and enforcement of this section shall be undertaken in collaboration with county governments and authorised county public health officers.
Justification: Supports coordinated implementation between the two levels of government.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing and public health regulation are county functions under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures and timelines for issuing licences are a matter for county legislation.

130. **Amend Clause 24 (Designated Smoking Areas)** by inserting the following paragraph after subsection 2(b)(vi): (vii) inspection and certification procedures under this section shall be developed in consultation with county governments.
Justification: Facilitates uniform enforcement while recognising county implementation responsibilities.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

131. **Amend Clause 25 (Director-General for Health)** by inserting the words "solely for the purposes of discharging National Government functions" immediately after the words authorised officers.
Justification: Recognises devolved public health functions and avoids over-centralisation of implementation authority.
Committee Resolution: The Committee did not adopt the proposal. The Director-General for Health is a national government officer under the Health Act, Cap. 241, and exercises only national government functions The Committee further noted that Clause 25 only replaces references to the "Director of Medical Services" with the "Director-General for Health" to align the Act with the Health Act, and does not alter the functions of either level of government.

9) The Kenya Revenue Authority (KRA) submitted as follows:

132. **Clause 4: Amend** Clause 4(c) in the proposed new paragraph (f) to include that that the prohibited products shall be prohibited through a *Gazette* notice.
Justification: To ensure public visibility and strengthen enforcement regarding prohibited tobacco products.
Committee Resolution: The Committee adopted the proposal with amendments. The register shall be published in the Gazette and on the website of the Ministry, kept up to date and accessible to licensed operators.

133. **Clause 5** on the Tobacco Control Advisory Committee: Amend Clause 5A to exclude tobacco industry representatives and strengthen conflict-of-interest safeguards and include mandatory declaration of interests annually.

Justification: This aligns with Article 5.3 of the WHO FCTC.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

134. **Clause 5** on the Tobacco Control Advisory Committee: Amend Claus(D)(1) to provide that the Chairperson shall hold office for a term of four years renewable once.
Justification: To align the duration of the initial term and the re-appointment term to ensure consistency and equality in the duration period.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

135. **Clause 10 (Tax and Price Policies):** Amend Clause by deleting paragraphs (b), (c) and (e) abd replacing (g) and (h) with the following proposed new paragraphs (g) and (h)—

> (g) Exclude the duty-free allowance imported by a passenger of cigarettes, cigars, cheroots, cigarillos, tobacco and snuff not exceeding in all 250g in weight; and
>
> (h) Exclude manufacture, repackaging, processing or importation of tobacco and tobacco products from export promotion schemes such as EPZs and SEZs.

Justification: The powers proposed in paragraphs (b), (c), and (e) relate to imposing taxes which are constitutionally vested in the National Assembly pursuant to Article 209 of the Constitution. Replacing paragraphs (g) and (h) properly distinguishes passenger duty-free baggage allowances under the EAC Customs Management Act, 2004 from general commercial export promotion schemes (EPZs/SEZs)
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that matters relating to taxes should be addressed under the relevant tax laws.

136. **Clause 12:** Amend the new proposed Sections 14C, 14D, 14E, 14G, 14I on Product Approval, Testing, and Fair Competition. **Section 14C(3):** Insert statutory timelines for import clearance and pre-market approval requests.
Justification: To provide for a timeline for the approval for imports.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that any delay in administrative decisions is remedied through Article 47 of the Constitution and the Fair Administrative Action Act, Cap. 7L.

137. **Section 14C(2): Sections 14D(3), 14E(2), 14G(1):** Delete *"Cabinet Secretary"* and substitute with *"the Committee"* regarding operational requests for additional information, sample testing by KEBS, and product clearance, while clarifying CS oversight on imports.
Justification: The application process is operational and not a policy matter hence this role should be designated to the Committee.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the powers of the Cabinet Secretary should be assigned to the Board, limiting the Cabinet Secretary functions to issuing policy guidelines and direction under the Act.

138. **Delete Section 14D(3) that provides that Section 14C(1)** on pre-market approvals shall not apply in respect of a product if another entity has already obtained approval from the Cabinet Secretary in respect of that product.
Justification: This is an anti-competitive trade practise that is a barrier to free market entry, hinders the level playing field and goes against the Competition Act.
Committee Resolution: The Committee adopted the proposal. The Committee resolved that the provision is an anti-competitive trade practice that goes against the Competition Act.

139. **Section 14I:** Require the published list of approved or banned products to be published specifically *"in the Gazette"*.
Justification: To include where the list of products will be published.
Committee Resolution: The Committee adopted the proposal. The register shall be published in the *Gazette* and on the website of the Ministry, kept up to date and accessible to licensed operators.

140. **Clause 13 (Supply to Young Persons):** Amend Section 15(5) by inserting the word *"import"* after the word *"manufacture"* (to read: *"No person shall manufacture, import or sell..."*).
Justification: Ensures imported tobacco and nicotine items are subject to the same strict supply and anti-youth access restrictions as locally manufactured products.
Committee Resolution: The Committee adopted the proposal. The Committee noted that this amendment is important to ensures that importers are subjected to similar strict supply restrictions as the local manufacturers.

10) The Anti-Counterfeit Authority (ACA) submitted as follows:

141. **Clause 12 (new section 14I: list of approved products):** Structure the list of approved products and authorised manufacturers or importers published under section 14I as a machine-readable register, searchable by brand, trademark, manufacturer, importer and Harmonised System (HS) code, and interface it with ACA's Anti-Counterfeit Integrated Management System (AIMS) and the Kenya Revenue Authority's (KRA) iCMS / Excisable Goods Management System (EGMS).
Justification: The requirement for the Cabinet Secretary to publish a list of approved products gives ACA enforcement officers an essential database for checking whether a product found in the market is genuine. Any product that is not on the list, or is linked to an unauthorised manufacturer, can be flagged at once as illicit or possibly counterfeit. A machine-readable register will allow a single verification look-up at the border, in warehouses and at points of retail, and will close the present gap whereby electronic nicotine delivery systems

(ENDS) enter the country without any regulator-issued reference list against which to test authenticity.

Committee Resolution: The Committee adopted the proposal with amendments. The register shall be published in the Gazette and on the website of the Ministry, kept up to date and accessible to licensed operators.

142. **Section 21(5A) (mandatory information on packets):** Expand section 21(5A) to require, in addition to the contact details of the manufacturer or importer and a local contact person, (i) a unique product identifier or serial code; (ii) the country of manufacture; (iii) the batch or production date; and (iv) a scannable authentication feature (QR code or equivalent).

Justification: The leaflet with the contact details of the manufacturer or importer and a legal or natural person in Kenya is a vital enforcement tool. It ensures that every legitimate product has a clear, locally responsible entity, making it easier for ACA to investigate intellectual property infringements, serve notices on suspected counterfeiters, and hold entities accountable under sections 22 to 34 of the Anti-Counterfeit Act. The four additional data elements are the minimum required under Article 8 of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) Protocol to Eliminate Illicit Trade in Tobacco Products (2012), to which Kenya is a State Party (ratified on 4 June 2014), and are essential for any meaningful track-and-trace system.

Committee Resolution: The Committee adopted the proposal with amendments. Section 53 shall be expanded to empower the Cabinet Secretary to make regulations on record-keeping, public registers, traceability, recall, seizure and destruction, and standardised packaging.

143. **Clause 12 (section 14D: declarations on production process, quality and safety):** Supported as proposed in the Bill.

Justification: Requiring manufacturers to describe their production process and to declare full responsibility for the quality and safety of the product sets a legal baseline that counterfeiters, who operate in the shadows and avoid safety standards, cannot meet. The documentation also allows ACA to distinguish legitimate manufacturing facilities from "back-alley" operations producing counterfeit nicotine liquids. This is particularly important for ENDS, where peer-reviewed studies have documented counterfeit refill liquids with undisclosed nicotine concentrations of between 3.7 and 20.4 mg/ml in products labelled "0 mg" (Omaiye et al., 2017), and heavy metals such as chromium, nickel, cadmium, lead, manganese and arsenic leaching from substandard heating coils. The quality-declaration regime therefore protects intellectual property and also works as a public health and consumer-protection measure, in line with Article 46 of the Constitution.

Committee Resolution: The Committee noted the support for the proposed amendment.

144. **Sections 17A and 19A (prohibition of hawking and online sales):** Amend the Bill to expressly empower the Communications Authority of Kenya, in consultation with ACA and the Ministry of Health, to issue take-down directives against online listings of unapproved tobacco products, and to require domestic digital platforms (including social media

intermediaries operating in Kenya) to remove such listings within forty-eight (48) hours of notification.

Justification: Prohibiting the sale of tobacco products, including e-cigarettes and nicotine pouches, through hawking, mobile vending and online platforms is a strategic measure against counterfeit trade. Counterfeit goods often spread through unregulated distribution channels, digital marketplaces and mobile vendors where traceability and monitoring are nearly impossible because sellers are anonymous. ACA's enforcement data and its 2020 Baseline Survey confirm that mobile vending and unregulated e-commerce channels are the main routes through which counterfeit fast-moving consumer goods enter Kenyan households. The take-down power gives section 19A operational effect.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

145. **Section 20A (fixed-location licensing):** Amend the Bill to require the Ministry of Health, in consultation with the Council of Governors, to prescribe a uniform national format for the county licence, incorporating a unique licence number, the geo-coordinates of the licensed premises, the categories of products authorised, and a QR-verifiable link to the central register.

Justification: Restricting trade to fixed locations designated in a licence, and requiring licences to be displayed prominently, allows ACA and other enforcement agencies to carry out more effective market inspections and helps to separate legitimate retailers from those possibly dealing in illicit or counterfeit stock. A uniform national format will prevent regulatory fragmentation across the 47 counties and will allow ACA inspectors and KRA officers working in any county to authenticate a retailer's licence in real time during joint compliance operations.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

146. **Clause 12 (sections 14A and 14B: standardised product specifications):** Retain the specifications in the Bill and further require the Kenya Bureau of Standards (KEBS), under the Standards Act (Cap. 496), to develop and gazette a Kenya Standard for ENDS and nicotine pouches within twelve (12) months of the commencement of the Act, with conformity to that standard made a condition for approval under section 14C.

Justification: The detailed requirements on nicotine concentration (not exceeding 10 mg/ml), refill container volumes (maximum 10 ml), cartridge or tank volumes (maximum 2 ml) and child-proof, tamper-proof packaging give objective criteria for enforcement. Products seized in the market that do not meet these measurements or safety features can be flagged at once as non-compliant or counterfeit. Counterfeiters typically fail to meet these precise standards, which allows ACA officers to use non-conformity as a basis for seizure under sections 23 and

24 of the Anti-Counterfeit Act. Making conformity to a Kenya Standard a condition for approval brings health, intellectual property and quality enforcement together, and gives ACA, KEBS and the Ministry of Health a single technical reference against which to test seized products.

Committee Resolution: The Committee noted the support for retaining the specifications in the Bill. The Committee observed that leaving the volume and nicotine concentration limits for nicotine products and nicotine pouches to be prescribed by the Kenya Bureau of Standards or the National Quality Control Laboratory would create uncertainty for regulators and industry, and resolved that the limits on volume and nicotine concentration be set out in the Act itself, to promote legal certainty and ease of implementation and enforcement.

147. **Clause 12 (section 14E: mandatory testing of samples):** Amend section 14E to expressly provide that the Government Chemist (or an ISO/IEC 17025-accredited laboratory designated by the Cabinet Secretary) retains reference samples of every approved product for a period of not less than five (5) years.

Justification: Testing samples to verify the accuracy of submitted information establishes the chemical make-up of genuine products. This baseline is essential to ACA when carrying out forensic analysis on suspected counterfeit nicotine liquids or synthetic nicotine formulations. A reference library of retained samples will give a defensible chemical fingerprint against which suspect liquids can be tested in any later criminal or civil proceedings.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

148. **Clause 12 (section 14C: prior authorisation of imports):** Supported as proposed in the Bill.

Justification: Requiring approval at least six (6) months before the first supply prevents the dumping of unverified and possibly counterfeit ENDS into the Kenyan market.

Committee Resolution: The Committee noted the support for the proposed amendment.

149. **Importation and border control (integration with the Single Window and port risk engines):** Amend the Bill to require the Kenya Trade Network Agency (KenTrade) to embed the section 14I list of approved ENDS products and authorised manufacturers or importers as a mandatory check within the Kenya National Electronic Single Window System (TradeNet).

Justification: ACA, KRA Customs and Border Control and the Pharmacy and Poisons Board (where relevant) would receive automatic alerts whenever an import declaration is filed against a tobacco or ENDS HS code for which no prior approval has been recorded. This is consistent with the existing intellectual property rights declaration regime under section 34B of the Anti-Counterfeit Act and would put the Bill into operation at the most critical control point, the

port of entry, where 80% of the counterfeit goods seized by ACA over the years have been intercepted.

Committee Resolution: The Committee adopted the proposal with amendments. The register shall be published in the Gazette and on the website of the Ministry, kept up to date and accessible to licensed operators.

150. **Inter-agency information sharing:** Amend the Bill to require the Tobacco Control Advisory Committee to establish a formal information-sharing protocol with ACA to allow real-time verification of approved tobacco brands and registered trademarks, and to expressly anchor in primary legislation a Memorandum of Understanding among the Ministry of Health, the Committee, ACA, KRA, KEBS, the Pharmacy and Poisons Board, the Communications Authority of Kenya and the Directorate of Criminal Investigations.

Justification: The Memorandum of Understanding would be modelled on the multi-agency Compliance and Enforcement Teams already constituted under the WHO FCTC Protocol implementation framework.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that Part VII of the Tobacco Control Act, Cap. 245A already contains provisions on enforcement of the Act including offences and proportionate penalties.

151. **Recall, withdrawal and disposal of seized products:** Harmonise the Bill's provisions on recall and withdrawal of unapproved products with the Anti-Counterfeit Act, and expressly cross-reference the procedural safeguards in sections 25 to 30 of that Act so that destruction of seized ENDS products follows a single framework.

Justification: Counterfeit tobacco and nicotine products pose heightened public health risks because of unverified additives and toxicity, and must be subject to clear destruction protocols. Aligning the Bill's recall and withdrawal measures with ACA's seizure and forfeiture powers under sections 22 to 33 of the Anti-Counterfeit Act will ensure that such harmful products are permanently removed from the supply chain. The Court of Appeal's recent decision in Anti-Counterfeit Authority v Wanyange & 4 Others (2025) reaffirmed the Authority's statutory power to issue and execute seizure orders under the Anti-Counterfeit Act. Cross-referencing the Act means destruction proceeds under one judicially tested framework rather than parallel regimes.

Committee Resolution: The Committee adopted the proposal in part. Section 53 shall be expanded to empower the Cabinet Secretary to make regulations on record-keeping, public registers, traceability, recall, seizure and destruction, and standardised packaging.

152. **Digital authentication:** Prescribe digital tax stamps or unique identification marks on ENDS packaging, and bring ENDS, nicotine pouches and refill containers within KRA's Excisable Goods Management System (EGMS), with each also marked with the Anti-Counterfeit Security Device administered by ACA under section 34B of the Anti-Counterfeit Act.

Justification: Each device carries a unique identifier that can be verified by consumers through a smartphone and by enforcement officers at borders, warehouses and retail shelves, with

every scan generating useful intelligence. Kenya's existing track-and-trace system for traditional cigarettes controlled approximately 1.175 billion packs in 2019 and reduced the illicit-cigarette share from 12% in 2013 to approximately 5% by 2016 (KRA / WHO data). Extending the same system to ENDS is expected to produce similar revenue and public health gains.

Committee Resolution: The Committee adopted the proposal with amendments. Section 53 shall be expanded to empower the Cabinet Secretary to make regulations on record-keeping, public registers, traceability, recall, seizure and destruction, and standardised packaging.

153. **Intellectual property rights recordation integration:** Integrate the list of approved manufacturers and importers with ACA's Anti-Counterfeit Integrated Management System (AIMS) and the Intellectual Property Rights (IPR) Recordation database.
Justification: This will allow real-time verification of brand authenticity at ports of entry during importation, consistent with section 34B of the Anti-Counterfeit Act and the Anti-Counterfeit (Recordation) Regulations, 2021.
Committee Resolution: The Committee adopted the proposal with amendments. The register shall be published in the Gazette and on the website of the Ministry, kept up to date and accessible to licensed operators.

154. **Long title, preamble and a new section (alignment with the WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products):** Amend the long title and the preamble of the Bill to expressly refer to the Protocol, and insert a new section requiring the Cabinet Secretary to publish, within twenty-four (24) months of commencement, regulations giving domestic effect to Articles 6, 8, 9, 11 and 13 of the Protocol in respect of ENDS and nicotine pouches.
Justification: Kenya signed the Protocol on 29 May 2013 and ratified it on 4 June 2014. It entered into force on 25 September 2018 and requires State Parties to implement, among other things, licensing of all participants in the tobacco supply chain (Article 6), a tracking-and-tracing regime (Article 8), record-keeping (Article 9), and regulation of internet, telecommunication and duty-free sales (Articles 11 and 13).
Committee Resolution: The Committee adopted the proposal in part. Section 53 shall be expanded to empower the Cabinet Secretary to make regulations on record-keeping, public registers, traceability, recall, seizure and destruction, and standardised packaging.

155. **New offence (dealing in counterfeit tobacco or nicotine products):** Introduce a stand-alone offence of "dealing in counterfeit tobacco or nicotine products", defined by reference to section 2 of the Anti-Counterfeit Act, with enhanced penalties where (a) the product contains harmful additives prohibited under section 14F; (b) the offender targets minors; or (c) the products bear forged excise stamps or counterfeit certification marks, with aggravated penalties of up to KSh 5 million or imprisonment for up to five (5) years, or both.

Justification: The penalty framework in the principal Act presently treats the sale of unapproved tobacco products as a generic offence. The aggravated penalties are in proportion to the public health and revenue harm these products cause.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that Part VII of the Tobacco Control Act, Cap. 245A already contains provisions on enforcement of the Act including offences and proportionate penalties.

156. **Capacity building and joint enforcement operations:** Insert a statutory obligation on the Cabinet Secretary, in consultation with the National Treasury, to allocate a defined percentage of the Tobacco Control Fund (proposed at not less than ten percent) to capacity building for ACA inspectors, KRA Customs officers, KEBS market surveillance officers and the National Police Service on the identification, handling and forensic analysis of counterfeit ENDS.

Justification: This investment is consistent with Article 14 of the FCTC Protocol and with section 5(c) of the Anti-Counterfeit Act, which mandates ACA to devise and promote training programmes on combating counterfeiting.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

157. **Whistleblower and public reporting mechanism:** Insert a whistleblower-protection clause and a public reporting hotline interfaced with ACA's existing reporting channels and the KRA "Soma Label" verification application.

Justification: Public participation in detection is consistent with section 5(a) of the Anti-Counterfeit Act and with Articles 18 and 21 of the FCTC Protocol, and will materially expand the reach of enforcement at minimal fiscal cost.

Committee Resolution: The Committee adopted the proposal with amendments. The Committee resolved that regulations shall provide for the reporting of violations and for periodic reporting by the Cabinet Secretary on implementation and enforcement.

11) The Kenya Bureau of Standards (KEBS) submitted as follows:

158. **Amend Clause 14A (Requirements for electronic nicotine delivery systems)** by deleting the fixed numerical and compositional specifications at section 14A(1)(a), (b), (d) and (f) and substitute a provision requiring the Cabinet Secretary for Health to request the National Standards Council to declare a Kenya Standard under section 9 of the Standards Act (Cap. 496) for electronic nicotine delivery systems and their refill containers, to which section 14A shall then refer.

Justification: Volume, nicotine concentration, purity and permitted ingredients are 'specifications' within the meaning of section 2 of the Standards Act, and their declaration for a commodity is reserved to the National Standards Council under section 9. Fixing them directly in the Bill bypasses that process. Kenya is a Member of the World Trade Organisation.

Article 4.1 of the WTO Agreement on Technical Barriers to Trade obliges Members to ensure that central government standardising bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards at Annex 3. Section 21 of the Standards Act gives Kenya Standards primacy over 'a specification made or declared under any other written law', but that primacy is doubtful once the specification is written into a later, more specific Act of Parliament. Routing the specification through section 9 in the first place avoids the conflict rather than leaving it to be resolved after the fact.

Committee Resolution: The Committee did not adopt the proposal. The Committee observed that leaving the volume and nicotine concentration limits for nicotine products and nicotine pouches to be prescribed by the Kenya Bureau of Standards or the National Quality Control Laboratory would create uncertainty for regulators and industry, and resolved that the limits on volume and nicotine concentration be set out in the Act itself, to promote legal certainty and ease of implementation and enforcement.

159. **Amend Clause 5A (Membership of the Tobacco Control Advisory Committee)** by inserting an additional paragraph nominating one person with expertise in industrial or commercial standards, nominated by KEBS, as a member of the Committee

Justification: The Committee will recommend the section 53(1A) regulations that fix e-liquid constituent levels and battery/electrical standards for electronic nicotine delivery systems, yet its membership under section 5A(1)(a)-(j) has no person with the 'knowledge of industrial or commercial standards' that section 6(2) of the Standards Act requires of members of KEB's own National Standards Council. KEBS is left to test conformity with specifications it had no part in setting.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

160. **Amend Clause 53(1A)(b) (Regulations: Battery and electrical component standards)** to require that standards for batteries and electrical components used in electronic nicotine delivery systems be developed by KEBS as Kenya Standards under section 9 of the Standards Act, and merely referenced - rather than independently prescribed in regulations under the Tobacco Control Act.

Justification: Battery and electrical-component safety standards are core, long-standing KEBS territory under sections 4(a) and (e) of the Standards Act, and the type of product KEB's Kenya Accreditation Service-accredited calibration facilities under sections 12A-12B are built to test.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the standardization of commodities is a function of the Kenya Bureau of Standards under the Standards Act (Cap. 496), and providing for the same in the Bill would duplicate the existing legal framework. Further, the matter is proposed to be dealt with in regulations as proposed under clause 26 of the Bill.

161. **Clause 27 (Repeal of the Schedule to the Tobacco Control Act):** No objection, noted for context only.
Justification: The clause is consequential: It removes the fixed statutory Schedule of health messages so that the Cabinet Secretary for Health may prescribe them by regulation instead. It does not itself engage KEB's mandate, but illustrates the Bill's general pattern of moving technical content out of fixed schedules into Cabinet Secretary regulation - similar to the concern raised above.
Committee Resolution: The Committee noted the support for the proposed amendment.

12) The Pharmacy and Poisons Board submitted as follows:

162. **Clause 3 and 12**: Define "nicotine-containing cessation product" or equivalent term and state expressly that such a product is regulated under the Tobacco Control Act, notwithstanding a cessation or therapeutic claim, subject to the statutory harmonisation required since nicotine remains a Part I poison under the Pharmacy and Poisons Act, Cap. 244.
Justification: The Board supports a clear and product-based allocation of regulatory responsibility to avoid duplication, regulatory uncertainty and parallel approval requirements. Clause 3 covers nicotine from any source and the Bill creates an approval pathway for tobacco products. The Board's proposed position is that this pathway should also govern nicotine-containing products presented for smoking or nicotine cessation, rather than requiring a parallel Board product approval.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

163. **Interface with the Pharmacy and Poisons Act, Cap 244: Nicotine as a Part I poison:** The Board therefore considers that the Bill should distinguish between the regulation of the product as a tobacco or nicotine product and the continued application of any relevant controls under Cap. 244 relating to nicotine as a scheduled poison.
Justification: The Bill should expressly address its relationship with the Pharmacy and Poisons Act, Cap. 244. This is necessary because nicotine is expressly recognised as a poison under the existing legal framework. The Schedule to the Poisons List Confirmation Order, Legal Notice 168, Part I, item 164 states: "Nicotine; its salts." Any provision suggesting that nicotine-containing cessation products fall wholly outside Cap. 244 may create an apparent statutory inconsistency.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

164. **Clause 3 and 12:** The Bill should expressly provide that non-nicotine medicinal products, health products and medical technologies intended for smoking or nicotine cessation remain subject to the applicable regulatory requirements under the Pharmacy and Poisons Act, Cap. 244.

Justification: The Bill should distinguish nicotine-containing products from non-nicotine medicinal products and medical technologies intended to support smoking or nicotine cessation. The Board's submission: Non-nicotine medicines and medical technologies used for cessation may fall within the definitions of "health product", "medical device", "medicinal substance" or "substance recommended as a medicine" in section 2 of Cap. 244. These products remain within the Board's functions under sections 3A and 3B.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

165. **Clause 5:** Add the Chief Executive Officer of the Board, or a designated representative, as an ex-officio member. The discretionary invitation under proposed section 5E is insufficient.

Justification: The Board will remain responsible for non-nicotine medicinal cessation products and medical technologies, and nicotine remains listed as a Part I poison. The Board's representation is therefore necessary to coordinate classification, poison controls, safety signals and enforcement without duplicating product approval.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

166. **Clause 12:** Provide one pathway for nicotine-containing cessation products under the Tobacco Control Act and a separate Board pathway under Cap. 244 for non-nicotine medicinal products and non-nicotine medical technologies used for cessation.

Justification: The Board's submission: Without an express boundary, the same cessation product could be presented to both tobacco-control authorities and the Board. That would create duplicative dossiers, licenses and enforcement decisions.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

167. **Clause 12:** Apply tobacco and nicotine-product standards and testing to nicotine-containing products. Apply the Board's and NQCL's pharmaceutical or medical-device controls to non-nicotine cessation medicines and medical technologies.Establish a referral process for undeclared nicotine or other active pharmaceutical ingredients.

Justification: Proposed section 14E assigns conformity testing to KEBS. The Board and the National Quality Control Laboratory (NQCL) retain functions under sections 3B(2)(k), 35D and 35K of the Pharmacy and Poisons Act, Cap. 244.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

168. **Clause 12, 20 and 23:** State the allocation expressly and prohibit cross-category claims that evade the applicable regulator. Require referral to the Board of advertisements for non-nicotine cessation medicines or medical technologies.

Justification: Section 3B(2)(n) and sections 36, 39 and 41 of Cap. 244 govern promotion, advertising and labelling of products within the Board's mandate. Under the proposed division, those provisions apply to non-nicotine cessation medicines and medical technologies, while nicotine-containing cessation claims are governed under the Tobacco Control framework.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

169. **Clause 12 and 26:** Require immediate inter-agency notification of serious adverse events, poisoning, undeclared nicotine or pharmaceutical ingredients, counterfeit products and illegal imports, and specify the lead regulator according to the product category.

Justification: The Board's surveillance and recall powers under sections 3A and 3B will apply to non-nicotine cessation medicines and technologies. Tobacco-control authorities will oversee nicotine-containing products. Undeclared nicotine, undeclared medicines and mixed-product risks may cross the boundary.

Committee Resolution: The Committee did not adopt the proposal. The Commitete noted section 53(2) of the Tobacco Control Act empowers the Cabinet Secretary to formulate the policy framework regarding the multidisciplinary and inter-sectoral implementation of the Act.

170. **Clause 12:** Correct the reference to proposed section 14J or to additives prescribed in regulations under section 53.

Justification: Proposed section 14A(1)(c) refers to additives specified under section 14F, although section 14F concerns decisions on product approval.

Committee Resolution: The Committee adopted the proposal to correct the cross referencing.

171. **Insert in section 2:** "For purposes of smoking or nicotine cessation, a product that contains nicotine shall be regulated under this Act and shall not require separate product registration or marketing authorization by the Pharmacy and Poisons Board. A non-nicotine health product or non-nicotine health technology intended for nicotine cessation shall be regulated by the Pharmacy and Poisons Board under the Pharmacy and Poisons Act."
Justification: The Bill should establish a clear and non-duplicative allocation of regulatory responsibility for nicotine-containing products used or presented for smoking or nicotine cessation.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

172. **Harmonization with the Poisons List:** Insert a consequential provision: "Nicotine and its salts remain listed in Part I of the Poisons List under the Pharmacy and Poisons Act. The Cabinet Secretary shall, in consultation with the Pharmacy and Poisons Board, prescribe the poison-control requirements that continue to apply to nicotine-containing products and measures to prevent duplicate product approval under the two Acts."
Justification: The Bill should expressly address its relationship with the Pharmacy and Poisons Act, Cap. 244, since nicotine and its salts are listed as a Part I poison.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that there is no conflict between the Bill and other existing laws.

173. **Insert in proposed section 5SA(1):** "the Chief Executive Officer/Registrar of the Pharmacy and Poisons Board or a designated representative;"
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

174. **Insert after proposed section 14C:** "Where it is uncertain whether a cessation product contains nicotine, or whether a non-nicotine product is a health product, medical device, medicinal substance or substance recommended as a medicine under the Pharmacy and Poisons Act, the Cabinet Secretary shall refer the matter to the Pharmacy and Poisons Board for classification before determining the application."
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that regulation of health products and technologies, including the grant of marketing authorization for medical products, is a function of the Pharmacy and Poisons Board under sections 3A and 3B of the Pharmacy and Poisons Act (Cap. 244). Further, the Committee

resolved that the approval process is a procedural and administrative matter better dealt with in regulations as proposed under clause 26 of the Bill.

175. **Insert after proposed section 14C:** "An approval for a nicotine-containing product under this Act shall be the applicable product approval for that product. A non-nicotine health product or health technology intended for cessation shall obtain the authorizations required under the Pharmacy and Poisons Act and shall not require approval as a nicotine-containing product under this Act."
Justification: The Bill should expressly prevent duplicate product approval requirements under the two regulatory frameworks.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

176. **Insert after proposed section 14F:** "A manufacturer, importer or responsible person shall promptly report serious adverse events, poisoning, product defects and any information that may affect the safety or compliance of an approved product, and shall maintain distribution records sufficient to facilitate its prompt traceability and recall."
Justification: The Bill should provide for appropriate post-market surveillance, adverse-event reporting, traceability and recall mechanisms to safeguard public health.
Committee Resolution: The Committee adopted the proposal in part. Section 53 shall be expanded to empower the Cabinet Secretary to make regulations on record-keeping, public registers, traceability, recall, seizure and destruction, and standardised packaging.

13) The National Quality Control Laboratory (NQCL) submitted as follows:

177. **Clause 3 (definitions of "ingredients", "tobacco product", ENDS, "electronic cigarette" and "nicotine pouch"):** NQCL observed that the definitions bring nicotine, synthetic nicotine, nicotine analogues, additives, packaging migrants and delivery devices into regulation.
Justification: Some products or components may overlap with medicinal substances, medical devices or poisons regulated under the Pharmacy and Poisons Act.
Committee Resolution: The Committee noted the submission. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

178. **Clause 4 (power to prohibit non-compliant products):** NQCL observed that the power requires objective laboratory evidence of non-conformity.

Justification: The institution responsible for generating or confirming that evidence is not comprehensively addressed.

Committee Resolution: The Committee noted the submission. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

179. **New section 5A(1) (Tobacco Control Advisory Committee):** Amend the proposed section 5A(1) by inserting: "the Director of the National Quality Control Laboratory established under section 35D of the Pharmacy and Poisons Act, or a designated representative;". This should be an ex officio position.

Justification: The Committee will influence standards, approvals, research and regulations. NQCL has no seat despite being the Ministry's statutory quality-control laboratory. The Advisory Committee includes national and county government, professional, business, civil society and youth representatives, but not the institution expected to provide independent laboratory evidence. Inviting NQCL occasionally under section 5E is weaker than permanent technical representation. The position would give the Committee continuous access to laboratory, pharmaceutical-quality and toxicological expertise without turning NQCL into the policy regulator.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

180. **Section 7 of the principal Act (Tobacco Control Fund):** Amend section 7 of the principal Act to permit the Tobacco Control Fund to finance "laboratory testing, post-market surveillance, acquisition and maintenance of analytical equipment, development and validation of methods, reference standards, proficiency testing, accreditation and training undertaken by designated public laboratories." Also add authority for the Cabinet Secretary to prescribe application and evaluation fees, analytical testing fees, annual surveillance levies and confirmatory-testing fees. Funds attributable to analytical work should be payable directly to, or appropriated for, the public laboratory performing the work.

Justification: Sections 7 and 8 of the principal Act, as amended, make no explicit allocation for testing, surveillance, reference materials, equipment or proficiency testing. The proposed approval system will require expensive capabilities, including nicotine and impurity assays, e-liquid constituent profiling, aerosol and emission generation and analysis, evaluation of packaging migrants, device-dose consistency testing, leak, tamper and container-closure assessments, reference standards and certified materials, and method development, validation and proficiency testing. Without statutory fees or Tobacco Control Fund allocations, the system may place an unfunded burden on public laboratories.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current

expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. The Committee further resolved that product testing shall be at the cost of the manufacturer or importer.

181. **New sections 14A and 14B (technical specifications):** NQCL observed that the sections establish technical specifications for e-liquids, ENDS and nicotine pouches.
Justification: Compliance cannot be established reliably without validated laboratory methods and appropriate sampling.
Committee Resolution: The Committee noted the submission. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

182. **New section 14D** (approval information): Expand the approval information required under section 14D by requiring applicants to submit:

i. full qualitative and quantitative composition,
ii. certificates of analysis for ingredients and finished products,
iii. specifications and validated analytical methods,
iv. batch numbers and manufacturing sites,
v. stability and shelf-life data,
vi. impurity and contaminant profiles,
vii. aerosol or emission data generated under prescribed conditions,
viii. evidence of dose consistency,
ix. packaging compatibility and migration data,
x. device specifications and electrical-safety reports,
xi. reference standards and sufficient samples for repeat testing, and
xii. proposed post-market surveillance arrangements.

Justification: The section requires ingredient, emission, toxicological, nicotine-dose and manufacturing information, but gives NQCL no express scientific assessment role and makes no provision for method validation or independent verification. A manufacturer's declaration of responsibility under section 14D(1)(f) should supplement, and not replace, independent analysis.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the approval process is a procedural and administrative matter better dealt with in regulations as proposed under clause 26 of the Bill.

183. **New section 14E (testing of samples):** Delete the proposed section 14E(2) and substitute: "(2) The Cabinet Secretary shall cause the samples submitted under subsection (1) to be tested:

i. by the National Quality Control Laboratory established under section 35D of the Pharmacy and Poisons Act, in respect of nicotine content, ingredients, impurities, contaminants, toxicological constituents, emissions and other parameters affecting human health,

ii. by the Kenya Bureau of Standards, in respect of applicable product, packaging, materials, electrical, mechanical and device-safety standards, or

iii. by any other laboratory designated by the Cabinet Secretary that is accredited to ISO/IEC 17025 for the relevant test and participates in appropriate proficiency-testing arrangements."

Add: "(3) In determining the laboratory to undertake a test, the Cabinet Secretary shall have regard to the statutory mandate, technical competence, accredited scope, available validated methods and avoidance of duplication among public institutions."

Justification: New sections 14C to 14F establish pre-market product approval, information requirements, sample submission, testing and approval decisions. Section 14E gives KEBS exclusive testing responsibility and omits NQCL. This creates a legally exclusive function, even though many tests concern human-health risk rather than ordinary product standardisation. KEBS has an important standards and conformity-assessment mandate, but the framework should distinguish product and device standards, packaging and electrical safety, where KEBS has clear competence, chemical composition, nicotine assay, impurities, contaminants, toxicants and health-related emissions, where NQCL should have a defined role, and medicinal nicotine products and medical devices, which remain subject to the Pharmacy and Poisons Act. The Bill could otherwise lead to separate laboratories, methods, databases and regulatory decisions for nicotine-containing products, creating duplication, inconsistent results and inefficient public expenditure. This functional division is preferable to merely replacing "KEBS" with "NQCL", because ENDS combine chemicals, packaging, electronics and delivery-device characteristics.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

184. **New section 14EA (national reference laboratory):** Insert after section 14E: "14EA. (1) The National Quality Control Laboratory shall be the national reference laboratory for the chemical, pharmaceutical and toxicological analysis of products regulated under this Act. (2) The Laboratory may (a) undertake confirmatory and referee analysis, (b) develop, validate and verify analytical methods, (c) coordinate inter-laboratory comparisons and proficiency testing, (d) maintain reference materials and analytical data, and (e) provide scientific advice to the Cabinet Secretary and the Committee."

Justification: This would protect NQCL's national role while allowing KEBS and other competent laboratories to perform tests within their respective scopes.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

185. **New sections 14G to 14J (unapproved products, product bans, additives and characterising flavours):** NQCL observed that the sections control unapproved products, product bans, additives and characterising flavours.
Justification: Enforcement decisions will depend on laboratory evidence, but no surveillance or reference-testing architecture is established.
Committee Resolution: The Committee noted the submission. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

186. **Clause 18 (section 21, harmful constituents):** NQCL observed that the clause requires packages to state harmful constituents.
Justification: Constituents must be independently measured and verified.
Committee Resolution: The Committee noted the submission. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

187. **New section 21B (single-use plastics):** NQCL observed that the section prohibits specified single-use plastics.
Justification: Testing may require coordinated chemical, materials and device assessment between NQCL, KEBS and environmental authorities.
Committee Resolution: The Committee noted the submission. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

188. **Clause 26 (section 53, regulations):** Amend the proposed section 53(1) to provide that regulations concerning composition, toxicity, emissions, laboratory testing, sampling, withdrawal or recall shall be made "in consultation with the National Quality Control Laboratory, the Kenya Bureau of Standards, the Pharmacy and Poisons Board and other relevant regulatory authorities."

Justification: The new section 53(1A) allows regulations on constituents, batteries, toxicity, emissions, product testing, additives, withdrawal and recall. NQCL is not identified as a mandatory technical consultee or designated laboratory. Consultation is especially important for permitted constituent levels, nicotine tolerances, purity criteria, prohibited additives, emission limits, analytical methods, measurement uncertainty and laboratory reporting thresholds.

Committee Resolution: The Committee noted that the Statutory Instruments Act, Cap. 2A requires regulatory impact assessment and public consultation before regulations of significant impact are made.

189. **New provision (Pharmacy and Poisons Act mandate):** Insert a new provision: "Nothing in this Act shall be construed as limiting the application of the Pharmacy and Poisons Act to a medicinal substance, medical device, poison, therapeutic nicotine product, or any product presented for the prevention, diagnosis or treatment of disease or modification of a physiological function." Add a referral mechanism: "Where the classification of a product is uncertain, the Cabinet Secretary shall refer the matter for joint determination by the Directorate responsible for public health, the Pharmacy and Poisons Board, the National Quality Control Laboratory and the Kenya Bureau of Standards before the product is approved."

Justification: NQCL is established under section 35D of the Pharmacy and Poisons Act as a statutory quality-control laboratory. Its role should be expressly preserved where products, ingredients or claims fall within pharmaceutical, toxicological or medical-device regulation. The definition of "electronic cigarette" excludes a medicinal substance or medical device under the Pharmacy and Poisons Act, but the broader definitions of "tobacco product" and "electronic nicotine delivery system" may still create uncertainty. A non-medicinal nicotine product could also contain substances regulated as poisons, while a product may shift classification if therapeutic claims are made. The Bill needs an express coordination and "without prejudice" provision.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

190. **New provision (official sampling and chain of custody):** Insert a provision requiring regulations to cover risk-based and random sampling, sampling at manufacture, importation, storage and retail points, sample quantities and representative sampling, sealing, labelling and documentation, analytical, control and referee samples, secure transportation and storage, chain-of-custody records, timelines for analysis and reporting, and disposal or return of residual samples. NQCL should participate in drafting these regulations.

Justification: Laboratory findings may underpin prosecution, recall and product bans. The Bill does not prescribe who may collect official samples, sample quantities and sealing procedures,

chain of custody, division into analytical, control and referee samples, treatment of seized or perishable samples, admissibility of certificates of analysis, confirmatory or appeal testing, or responsibilities for market surveillance. This could expose recalls, bans and prosecutions to avoidable evidentiary challenges.

Committee Resolution: The Committee adopted the proposal in part. Section 53 shall be expanded to empower the Cabinet Secretary to make regulations on record-keeping, public registers, traceability, recall, seizure and destruction, and standardised packaging.

191. **New provision (certificates of analysis):** Insert: "A certificate of analysis signed by the Director of the National Quality Control Laboratory, or by an analyst duly authorised in writing by the Director, shall be admissible in proceedings under this Act as prima facie evidence of the matters stated in the certificate." A corresponding provision may be included for certificates issued by KEBS within its assigned scope.

Justification: The Bill makes no statutory provision on certificates of analysis, although laboratory findings may underpin prosecution, recall and product bans.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that section 77 of the Evidence Act (Cap. 80) already provides for the admissibility of reports by Government analysts as evidence in criminal proceedings. The proposed provision would therefore duplicate the existing legal framework.

192. New provision (confirmatory and appeal testing): Insert: "A person aggrieved by an adverse analytical finding may, within the prescribed period and upon payment of the prescribed fee, request confirmatory analysis of the sealed referee sample by the national reference laboratory."

Justification: The result should not automatically suspend an urgent public-health recall, but the affected party should retain procedural fairness.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

193. **New section (post-market surveillance):** Insert a new section: "The Cabinet Secretary shall establish a risk-based post-market surveillance programme for products regulated under this Act, implemented in collaboration with the National Quality Control Laboratory, the Kenya Bureau of Standards, the Pharmacy and Poisons Board, the Kenya Revenue Authority and county governments." The programme should cover products at ports of entry, at manufacturing premises, in warehouses and retail outlets, sold under an approved brand but suspected of modification, implicated in adverse incidents, and suspected to be illicit, counterfeit or mislabelled.

Justification: NQCL gave no separate justification for this amendment.

Committee Resolution: The Committee did not adopt the proposal. The Commitete noted section 53(2) of the Tobacco Control Act empowers the Cabinet Secretary to formulate the policy framework regarding the multidisciplinary and inter-sectoral implementation of the Act.

194. **New provisions (conflict-of-interest protection):** Add provisions requiring laboratory independence, declaration of conflicts by analysts and advisers, confidentiality of genuine trade secrets, disclosure of health and safety information where necessary, a prohibition against manufacturers selecting the official laboratory or financing individual analysts directly, and publication of approved products and summary analytical findings. Testing fees should be paid into an official institutional account or statutory fund, not directly to personnel.
Justification: Laboratories will handle commercially sensitive formulations and may face industry pressure.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible.

14) Kenya National Commission on Human Rights (KNCHR) submitted as follows:

195. Amend Clause 3 (amendment of section 2 of Cap. 245A) to define what "nicotine analogues" means.
Justification: There is need for clarity.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to insert a definition of "nicotine analogue" in Clause 3.

196. Amend Clause 10 (tax and price policies) to read as follows: "In line with the WHO Framework Convention on Tobacco Control, the Cabinet Secretary for the time being in charge of finance shall—".
Justification: The WHO Framework Convention on Tobacco Control (WHO FCTC) requires member states to implement robust price and tax measures on tobacco products. Article 6 aims to make tobacco products less affordable, ultimately reducing consumption, preventing youth initiation and increasing government revenue.
Committee Resolution: The Committee noted the submission. The Committee resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

197. **Amend Clause 12, proposed section 14A(2) (requirements for electronic nicotine delivery** systems), to enhance the sanctions for non-compliance.
Justification: Given the impact of electronic nicotine products on human health and their cost to the country's health system, a fine of Ksh. 1,000,000 or imprisonment for two years, or both, is not punitive enough and should be enhanced further.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the proposed penalty is sufficiently deterrent, proportionate to the offence and consistent with penalties for comparable offences under the Act.

198. Amend Clause 12, proposed section 14B(2) (requirements for nicotine pouches), to enhance the sanctions for non-compliance.
Justification: This will increase compliance.
Committee Resolution: The Committee noted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

199. Amend Clause 12, proposed section 14H (banning of products), to read as follows: "In consultation with the relevant stakeholders, the Cabinet Secretary may ban any product which does not conform to the requirements of this Act from being manufactured or sold."
Justification: This will avoid arbitrary decisions that may attract litigation. Public participation in decision-making is also a national value and principle of governance.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the powers of the Cabinet Secretary should be assigned to the Board, limiting the Cabinet Secretary functions to issuing policy guidelines and direction under the Act. The Committee further resolved to provide that the Board shall have power to prohibit the manufacture, sale, distribution or importation of a tobacco product that does not comply with the provisions of the Act.

200. Amend Clause 13 (amendment of section 15 of Cap. 245A) by deleting proposed subsection (5A), which bans the sale of tobacco products within a radius of one hundred metres.
Justification: The proposed restriction is impractical to enforce and would create unnecessary compliance burdens without achieving meaningful public health outcomes. A blanket ban based on geographic radius is difficult to monitor, especially in densely populated urban areas where retail outlets are clustered. The law should instead focus on protecting minors by prohibiting the sale of tobacco products to persons under the age of eighteen years, which is already a recognised international standard.
Committee Resolution: The Committee did not adopt the proposal to delete section 15(5A). Distance restrictions complement, and do not replace, controls on sale to minors, and they reduce the visibility of products near children.

201. Amend Clause 16 (online sale of tobacco products) by deleting the ban on online sale, and instead require sellers on online platforms to ensure that they do not sell tobacco products to persons under the age of eighteen years.
Justification: The ban runs counter to the progress the country has made in e-commerce. The rapid growth of e-commerce should be protected and encouraged.

Committee Resolution: The Committee did not adopt the proposal to remove the ban on online sales. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

202. Amend Clause 23 (health warnings in premises) to require that health warning information is available in accessible formats, such as Braille and pictorials, so that persons with different disabilities can access it.
Justification: This will ensure inclusivity and non-discrimination.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that additional requirements on health warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

15) Sen. Catherine Muyeka Mumma, CBS, MP, submitted as follows:

203. **Clauses 2, 4, 5 and 6 (new sections 5 to 5I), Tobacco Control Advisory Committee.** Replaces the former Tobacco Control Board with a Tobacco Control Advisory Committee. Membership includes the COG Health Committee chair or representative, a tobacco expert nominated by COG, the Kenya National Youth Council CEO, public-health, Treasury, business, medical and civil-society representation. Tobacco-industry employees/agents and persons with pecuniary interests are disqualified. Updates governance, creates a multi-sectoral advisory structure, gives counties and youth a direct place in tobacco-control governance and strengthens conflict-of-interest safeguards. This is a substantive feature of the Bill, not a drafting footnote. Replaces Board with Tobacco Control Advisory Committee; county and youth representation; conflict-of-interest exclusions; Ministry of Health secretariat.
Justification: The Bill replaces the former Board with a multi-sectoral Advisory Committee that includes county-government, youth, public-health, Treasury, business, medical and civil-society representation and expressly excludes tobacco-industry conflicts. Its design is intended to improve coordination while protecting tobacco-control decision-making from industry influence.
Committee Resolution: The Committee noted the support for the proposed amendment. However, the Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

204. **Clause 3 (section 2), Definitions and scope.** Expands 'tobacco product' to include nicotine from any source, synthetic nicotine formulations, nicotine analogues, electronic delivery systems and liquids; defines ENDS, electronic cigarettes, nicotine pouches, characterising flavour, additive, tobacco smoke and related terms.

Justification: Prevents new product forms from escaping regulation simply because they do not resemble a conventional cigarette. Creates the legal foundation on which the ENDS and nicotine-pouch controls operate. Synthetic nicotine, nicotine analogues, ENDS, electronic cigarettes, pouches, flavours/additives, electronic aerosol/smoke.

Committee Resolution: The Committee noted the support for the proposed amendment. The inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

205. **Clauses 7 to 9, Fund, reporting and county terminology.** Updates the compensatory contribution provisions, adds treatment of chronic illnesses caused by tobacco products as a Fund purpose, requires annual research/programme reporting and replaces 'local authority' with 'county government'.

Justification: Modernises the principal Act and aligns it with the devolved system of government. Also reinforces the Bill's practical connection to county structures. Compensatory contribution; chronic-illness treatment; annual research reporting; 'local authority' replaced by 'county government'.

Committee Resolution: The Committee noted the support for the proposed amendment. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

206. **Clause 10 (section 12), Tax and price policies.** Replaces section 12 with measures on tobacco taxation, inflation adjustment, tax-free tobacco, allocation of a portion of tobacco tax revenues to NCD prevention/control, illicit trade and duty-free zones.

Justification: Uses fiscal policy as a public-health tool and seeks to prevent tax structures from undermining tobacco-control objectives. This is the principal fiscal component of the Bill and should be distinguished from the product-regulation provisions. Tax measures, inflation adjustment, tax-free tobacco, NCD revenue allocation, illicit trade and duty-free-zone controls.

Committee Resolution: The Committee noted the support for the proposed amendment. Clause 10 is retained, requiring periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

207. **Clause 12 (new section 14A), ENDS product limits.** Caps refill containers at 10 ml; single-use cartridges/tanks at 2 ml; nicotine-containing liquid at 20 mg/ml; requires safe ingredients, consistent nicotine delivery and child/tamper/leak-proof construction.

Justification: Kenya presently has no equivalent comprehensive statutory limits for the emerging vape market. This is the core product-safety architecture of the Bill. 10 ml refill; 2 ml tank/cartridge; 20 mg/ml nicotine; safe ingredients; consistent dose; child/tamper/leak-

proof. The figures have clear international analogues. The United Kingdom has long used the same 20 mg/ml nicotine ceiling and 2 ml tank limit. The policy question is not whether every jurisdiction uses identical numbers, but whether Kenya should leave potency and capacity entirely to manufacturers. The Senator submitted that because puff counts are not a standardized dose measure, the Bill regulates the measurable variables underneath them, liquid volume and nicotine concentration. The extraordinary puff claims in Kenya nevertheless illustrate the scale of product currently reaching consumers without equivalent statutory volume limits.

Committee Resolution: The Committee noted the support for the proposed amendment. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements. The Committee resolved that the limits on volume and nicotine concentration be set out in the Act itself, to promote legal certainty and ease of implementation and enforcement.

208. **Clause 12 (new section 14B), Nicotine pouches.** Requires child/tamper-proof pouches, consistent nicotine delivery and a maximum of 20 mg nicotine per pouch.

Justification: Extends regulation beyond vapes to another emerging nicotine product already capable of youth uptake. Prevents the regulatory framework from chasing one product at a time. 20 mg per pouch; child/tamper-proof; consistent nicotine delivery.

Committee Resolution: The Committee noted the support for the proposed amendment. However, the Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

209. **Clause 12 (new sections 14C to 14I), pre-market approval, disclosure, testing and recall.** Requires manufacturer/importer approval, six-month advance application, ingredient/emissions and toxicological data, responsible-person details, product samples, KEBS conformity testing, written decisions, withdrawal/recall of non-conforming products and publication of approved/banned products.

Justification: At present, market entry can occur without a dedicated tobacco-product approval system capable of testing claims, ingredients, dose and conformity before sale. Moves regulation upstream. The State does not have to wait for harm or enforcement complaints after a product is already widespread. Pre-market approval; six-month application; ingredient/toxicology disclosures; KEBS testing; recall/withdrawal; approved/banned list. The Sponsor of the Bill submitted that the relevant question is whether a seller and product can be identified, tested and held accountable. Compliance processes can be streamlined, but the absence of traceability is itself the regulatory gap the Bill is intended to cure. Illicit trade is an enforcement challenge, not a reason to leave the legal market without standards. Licensing, product approval, published approved-product lists and conformity testing can assist enforcement by making lawful products and sellers identifiable.

Committee Resolution: The Committee noted the support for the proposed amendment. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L. The Committee further resolved that the powers of the Cabinet Secretary should be assigned to the Board, limiting the Cabinet Secretary functions to issuing policy guidelines and direction under the Act.

210. **Clause 12 (new section 14J), Additives and characterising flavours.** Prohibits specified additives, including those implying health benefits, stimulant additives, emission colourings, additives increasing toxicity/addictiveness and additives resulting in a characterising flavour.
Justification: Addresses product engineering that can disguise risk, intensify appeal or increase addictiveness. Particularly relevant to fruit, candy, menthol and other youth-attractive flavour profiles. Prohibits specified additives and characterising flavours. The claim that flavours are important to adult smokers switching products. must be weighed against youth appeal. The Bill's policy choice is to prevent characterising flavours from serving as a recruitment device. Any proposed alternative should be judged by whether it provides an equally enforceable youth-protection standard.
Committee Resolution: The Committee noted the support for the proposed amendment. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

211. **Clause 13 (section 15), Youth-appealing designs and 100-metre buffer.** Prohibits tobacco-product designs that imitate sweets, snacks, toys, cartoons and youth motifs; prohibits sale within 100 metres of a place primarily serving persons under 18.
Justification: Reduces product normalisation around schools and other child-focused environments. One of the Bill's clearest direct child-protection provisions. Bans youth-appealing designs and sale within 100 metres of places primarily serving under-18s.
Committee Resolution: The Committee noted the support for the proposed amendment. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years. The prohibition of youth-appealing designs in section 15 is retained.

212. **Clause 14 (section 16), Retail age-warning notices.** Enlarges prescribed warning notice, changes colour requirement to red on white, and increases the penalty for breach.
Committee Resolution: The Committee noted the support for the proposed amendment. The Committee resolved to provide a reasonable transitional period within which persons dealing in nicotine products shall comply with the Act and the regulations.

213. **Clauses 15 to 17, Hawking, online sales and county licensing.** Bans hawking/mobile vending; bans online/e-commerce sale of tobacco products including nicotine pouches and ENDS; requires county licensing of manufacturers/distributors/storage/sellers and confines dealing to fixed licensed locations.

Justification: Targets the channels that make sellers difficult to identify and age restrictions difficult to enforce. Directly answers the documented delivery-without-ID problem and makes county governments part of retail enforcement. The Bill provides as follows. Clause 15 (new section 17A). Prohibits hawking, vehicle and mobile vending; Clause 16 (new section 19A). Prohibits online/e-commerce sales of tobacco products, including pouches and ENDS; Clause 17 (new section 20A). County licence required; fixed licensed location; licence displayed; only compliant products may be sold. Senator Mumma submitted that a website declaration is not the same as verified age at purchase and delivery. She is further submits that earlier market testing recorded actual deliveries without ID authentication. A credible alternative to prohibition would need enforceable identity verification at both ordering and handover, with a clearly accountable seller.

Committee Resolution: The Committee noted the support for the proposed amendment. The Committee resolved that providing for a transitional period for hawking and mobile vending would compromise enforcement and implementation of the Act. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online. County licensing of premises is retained, as trade licensing and public health regulation are county functions under the Fourth Schedule to the Constitution.

214. **Clauses 18 and 19, Packaging, dealer registration and single-use plastics.** Requires 75% front/back health warnings in English and Kiswahili, plain packaging, Ministry registration of dealers and prohibits tobacco products/packaging/disposable electronic delivery systems using single-use plastics.

Justification: Addresses packaging as advertising, regulatory traceability and the environmental footprint of disposable devices. Combines health information, market accountability and product-design controls. The Bill provides as follows; Clause 18 (section 21). 75% front/back warnings in English and Kiswahili; harmful-constituent statement; plain packaging; Clause 19 (new sections 21A to 21B). Health-Ministry registration of dealers; prohibition of single-use plastics in tobacco products/packaging/disposable delivery systems.

Committee Resolution: The Committee noted the support for the proposed amendment. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. Proposed section 21B is retained and its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024.

215. **Clauses 20 and 21, Digital advertising and free samples.** Extends advertising restrictions expressly to online/digital platforms/influencers/brand ambassadors; prohibits free samples of ENDS, nicotine pouches and related components as promotion.

Justification: Closes modern promotional channels that were not contemplated when the 2007 Act was enacted. Essential where product discovery and sales increasingly begin on social media or online. The Bill provides as follows; Clause 20 (section 25). Expressly includes online/digital platforms and influencer/brand-ambassador advertising; Clause 21 (section 26). Prohibits free samples of ENDS, pouches and related components.

Committee Resolution: The Committee noted the support for the proposed amendment. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

216. **Clauses 22 to 24, Smoke-free places, retail warnings and designated areas.** Updates smoke-free rules for specified public/child-focused spaces, requires premises selling ENDS/nicotine pouches to display age, health-risk and addiction warnings, and strengthens engineering standards for designated smoking areas.

Justification: Protects non-users from involuntary aerosol/smoke exposure and ensures point-of-sale warnings are visible. Extends the principal Act's public-space logic to electronic delivery systems. The Bill provides as follows; Clause 22 (section 33). Updates smoke-free spaces and places requiring designated areas; Clause 23 (new section 34A). Requires under-18, health-risk, addiction/overdose and 'not a safe alternative' warning at premises selling ENDS/pouches; Clause 24 (section 35). Enclosed, isolated, independently ventilated, negative-pressure and engineer-certified standards.

Committee Resolution: The Committee noted the support for the proposed amendment. Clauses 22 and 24 expand smoke-free places and extend them to electronic nicotine delivery systems and are retained. The Committee resolved that no designated smoking area shall be permitted on aircraft. The format, size and placement of point-of-sale warnings shall be prescribed in regulations.

217. **Clauses 25 to 27, Administrative updates and regulation-making.** Updates Director of Medical Services references; allows regulations on e-liquid constituents, batteries/electrical components, toxicity/emissions, testing, approvals/recalls, additives and package health messages; requires consultation with county governments/COG; repeals the old schedule.

Justification: Provides the technical rule-making machinery needed to keep standards current. Important because technology will continue to change after enactment. The Bill provides as follows; Clause 26 (section 53). Technical standards on constituents, batteries, emissions, testing, approvals/recalls, additives and health messages; consultation with counties/COG; Clause 27. Repeals the old schedule.

Committee Resolution: The Committee noted the support for the proposed amendment. Section 53 shall be expanded to empower the Cabinet Secretary to make regulations on record-keeping, public registers, traceability, recall, seizure and destruction, and standardised packaging. Clause 27 is a consequential amendment, as warning labels will be prescribed by regulations made under section 53.

16) Coulson Harney LLP submitted as follows:

218. **Amend Sections 14C and 14F.** To address concerns listed below, while preserving robust public health oversight, the Committee may wish to consider replacing the Cabinet Secretary's "prior approval" mandate wording in Sections 14C and 14F with "mandatory pre-market notification". This still preserves regulatory oversight while reducing any broad discretionary powers. They respectfully submit that the Bill should be amended to incorporate a clear and streamlined pre-notification/" pre-market notification" process for products prior to their placement on the market. A well-defined pre-notification mechanism would enable the relevant regulatory authority to maintain adequate oversight of products entering the market, whilst affording producers and importers sufficient certainty as to their compliance obligations. **Justification:** In Sections 14C (3) and (4) of the Bill, the Cabinet Secretary's approval process lacks basic procedural safeguards (including timelines, reasons, and a right of review/appeal), contrary to Article 47 of the 2010 Constitution and the Fair Administrative Action Act (CAP. 7L). First, the provisions are silent on any right of appeal or review where an application for approval is refused or otherwise denied by the Cabinet Secretary. In the absence of a prescribed appeal mechanism, an applicant is left without a clear statutory avenue to challenge or seek reconsideration of that decision. This omission raises substantial concerns from the perspective of procedural fairness and administrative justice under Section 4(3)(a) to (d) of the Fair Administrative Action Act (Cap. 7L), as it effectively renders the initial determination final notwithstanding any error of fact or law. Secondly, Sections 14C (3) and (4) of the Bill do not address the position of applicants who receive no response whatsoever to an application for approval. The provisions fail to stipulate any timeframe within which a decision on an application must be communicated, nor does it provide for any deemed outcome, whether by way of deemed approval or deemed refusal if no response is forthcoming. Consequently, an applicant may be left in a state of indefinite uncertainty, with no means of compelling a determination from the Cabinet Secretary or otherwise advancing the application for approval. Thirdly, the provision does not contemplate any recourse or remedy available to an applicant in circumstances where there are inordinate or unreasonable delays in the processing of an application for approval by the Cabinet Secretary. The absence of any prescribed time limits for the determination of applications, coupled with the lack of any enforcement or escalation mechanism, creates a material risk that applicants may be subjected to protracted and unexplained delays without any practical means of redress. This increases the risk of;

(i) inconsistent decision-making;
(ii) regulatory and procedural arbitrariness contrary to the Fair Administrative Action Act (CAP 7L);
(iii) regulatory capture; and
(iv) legal challenge.

Taken together, these deficiencies in Section 14C represent a significant lacuna in the Bill. It is respectfully concluded that the provision ought to be amended to incorporate, at a minimum, a formal right of appeal against the refusal of an approval, a prescribed timeframe within which decisions on applications must be communicated, provision for a deemed outcome in the event of non-response, and an appropriate remedy in the event of

unreasonable delay. The proposed Cabinet Secretary's approval process has been mooted without appropriate checks and balances by the TCAC or the Ministry of Health. This power is wide and discretionary and is vulnerable to misuse without the proper legal guardrails in place, as proposed.

Committee Resolution: The Committee did not adopt the proposal to replace pre-market approval with pre-market notification. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L. The Committee further resolved that deemed approval of nicotine products that have not been assessed would defeat the purpose of the approval regime and the protection of public health and any such delay that may occur is remedied through Article 47 of the Constitution and the Fair Administrative Action Act, Cap. 7L. On the discretion of the Cabinet Secretary, the Committee resolved that the powers of the Cabinet Secretary should be assigned to the Board, limiting the Cabinet Secretary functions to issuing policy guidelines and direction under the Act.

219. **Section 17 of the Bill.** The administrative and compliance burden may be onerous on market players and may restrict market entry/economic freedom and operate as a barrier to business.

Justification: The Bill at Section 17 (1) and (2) imposes a range of regulatory and administrative obligations on tobacco and nicotine companies, including this licensing requirement, extensive reporting requirements, product registration procedures, periodic inspections, and compliance certifications. The Bill proposes a new Section 20A under CAP 245A, which are unclear licence fees and separate registration requirements and a registration fee highlighted at section 19 of the Bill (a new Section 21A in CAP 245A); for manufacturers, importers, and distributors of tobacco and nicotine products that will be, in their respectful submission, disproportionately high, when combined with all other statutory and national/county government fees in Kenya, and constitute an unjustifiable barrier to market entry. The Bill, as drafted, imposes overlapping regulatory requirements that increase the cost of compliance without a clear corresponding public health justification on the face of the Bill. Requiring separate licences, registrations, approvals, and reporting obligations at multiple levels of the supply chain creates an administrative burden that is neither efficient nor reasonable and may incentivise informal trade and general non-compliance. Any fees introduced by the Bill and any subsequent regulations should be clear, fair, and proportionate to market conditions and the cost of doing business in Kenya. They noted that this requirement would be in addition to the standard regulatory approvals and permits required in Kenya such as tax reporting, county licensing, national social security services, and Business Registration services. Section 24 of the Competition Act prohibits the abuse of a dominant position, and Sections 21 and 57 addresses exclusionary conduct. Excessively high regulatory fees entrench the position of incumbent operators who can absorb such costs, whilst excluding potential competitors. This runs contrary to the Bill's own stated purpose of addressing anti-competitive conduct and the abuse of a superior bargaining position. The fees should be set at a level that

is reasonable, transparent, and proportionate to the legitimate regulatory objectives pursued, in accordance with the principles of fair administrative action enshrined in Article 47 of the Constitution and given statutory expression in the Fair Administrative Action Act, Cap. 7L. They propose deletion of this amendment relating to licensing of a company's premises by counties (each county in which a manufacturer/importer or retailer is present) at Section 17 of the Bill, or in the alternative, a fair and reasonable licensing/approval process and fees anchored in law and supported by a regulatory impact assessment. They further submit that the Bill can propose leveraging existing county-level permit or single national registration structures rather than introducing a new and separate county licence requirement. Producers/manufacturers and importers who already hold valid county permits/single national registrations should not be required to obtain an additional licence that is duplicative in scope and purpose. In respect of the county licensing at Section 17 of the Bill, and national registration at Section 19 of the Bill 1. Coulson Harney LLP noted that, a single national registration system already exists under the auspices of the Kenya Revenue Authority ("KRA"). They urge the Committee to consider adopting or integrating the existing KRA registration framework which can trickle down or be cross-referenced to the counties in a singular manner for the county premise licence, rather than establishing a parallel registration requirement, as requiring these entities to obtain a further, duplicative national registration and then a county licence, which would serve only to increase compliance costs and administrative complexity without any proportionate regulatory benefit. In respect of retailers, the imposition of an additional county licence, where valid county permits are already held would similarly create an unnecessary barrier to entry and ongoing operations across counties where such retailers are active, particularly for smaller retailers that are least equipped to absorb the attendant costs and administrative demands. Coulson Harney LLP says this may also lead to proliferation of counterfeit goods and the "black market" where compliant retailers are pushed out of market due to the high administrative costs and burden. Producers, manufacturers, and importers, who already hold valid county permits or are subject to existing national registration requirements, should not be compelled to obtain additional registrations and licences that are duplicative in scope and purpose. They refer to their recommendation at paragraph 4.7. A proportionate and streamlined regulatory approach, one that builds upon existing registration and permits frameworks rather than layering new requirements upon them, would better serve the dual objectives of effective regulation and the promotion of a competitive, accessible market. Taken together, these recommendations are directed at ensuring that the regulatory framework remains coherent, avoids unnecessary duplication of existing mechanisms, and achieves its objectives in a manner that is proportionate, efficient, and minimally burdensome for all stakeholders. Whilst they acknowledge the legitimacy of proportionate regulation in the interests of public health, the cumulative effect of the obligations imposed by the Bill is unduly burdensome and risks operating as a non-tariff barrier to market access, contrary to the requirements of expeditious, efficient, lawful and reasonable administrative action under Article 47 and the Fair Administrative Action Act (Cap. 7L). Article 47 of the Constitution guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. The Fair Administrative Action

Act, Cap. 7L gives effect to this right and requires that administrative decisions, including the imposition of regulatory obligations, be proportionate to the objective sought to be achieved. **Committee Resolution:** The Committee adopted the proposal in part. County licensing of premises is retained, as trade licensing and public health regulation are county functions under the Fourth Schedule to the Constitution, and the procedures for issuing licences are a matter for county legislation. The Committee did not adopt mutual recognition of licences across counties. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

220. **Section 19 of the Bill**. The proposed registration requirements and fees may be onerous on market players, restrict market entry/economic freedom, and operate as a barrier to business. **Justification:** The proposed registration requirement under Section 19 is likely to increase the cost of compliance and doing business without a demonstrated corresponding public health benefit. Requiring additional tobacco-sector registrations, approvals, and reporting obligations across multiple levels of the supply chain creates an administrative burden that is neither efficient nor reasonable. The amendment to include possibly steep registration fees could be deemed to be anti-competitive and price restrictive. This could lead to significant market distortion and proliferation of products on the "black market". The tobacco and nicotine industry operates differently from other FMCG industries, and therefore the specific varying context should be considered given the different inputs manufacturers have into their final products and business environment. Members of the tobacco and nicotine industry, as a sub-sector of the FMCG sector, are entitled to the same treatment as any other sub-sector within FMCG. This right is grounded in the principle of equality and non-discrimination. All businesses operating in Kenya, regardless of the sub-sector to which they belong, should be subject to the same registration requirements and business processes. Where a particular sub-sector is required to comply with additional or more burdensome regulatory processes that do not apply to comparable sub-sectors, this creates a form of "non-tariff" barrier. They propose deletion of this amendment regarding the registration of dealers by the Ministry of Health at Section 19 of the Bill, or alternatively, a fair registration process and mechanism anchored in law and supported by a regulatory impact assessment. They note that a single national registration system for manufacturers and importers already exists under the auspices of the Kenya Revenue Authority ("KRA"). Considering this, they urge the Committee to consider adopting or integrating the existing KRA registration framework rather than establishing a parallel registration requirement. The introduction of a duplicative registration obligation would impose an unnecessary administrative and financial burden on manufacturers and importers, without a corresponding regulatory benefit. A single, unified national registration would promote efficiency, reduce compliance costs, and ensure consistency across the regulatory landscape. They further submit that the Bill can propose leveraging existing county-level permit or single national registration structures rather than introducing a new and separate county licence requirement. Producers/manufacturers and importers who already hold valid county permits/single national registrations should not be required to obtain an additional licence that is duplicative in scope and purpose. Utilizing existing permits and

frameworks would therefore reduce regulatory fragmentation, avoid placing undue strain on both county authorities and regulated entities, and ensure that the framework remains proportionate to its stated objectives.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that the manner of registration is an implementation matter that shall be addressed through regulations made by the Cabinet Secretary.

221. **Section 26 (1A) (a), (b), (c), (d), (f) of the Bill**. The Cabinet Secretary has undue broad ultra vires powers to prescribe regulations regarding permissible levels of constituents in e-liquids and other ENDS; standards for batteries and electrical components used in ENDS; toxicity and emission levels of ENDS; testing of tobacco products; permitted additives that may be incorporated in ENDS and other tobacco products.

Justification: The powers purportedly conferred upon the Cabinet Secretary under Section 26(1A)(a), (b), (c), (d) and (f) of the Bill concern product standards, specifications and testing. These matters fall squarely within the statutory and technical mandate of the Kenya Bureau of Standards ("KEBS") and the National Standards Council (the "Council") established under the Standards Act (Cap. 496). The proposed Section 14E (submission and testing of samples) should likewise be aligned to the KEBS framework. In their submission, they request Parliament to avoid creating a parallel standard-setting and testing regime under the Tobacco Control Act where a comprehensive regime already exists under the Standards Act. Section 7 of the Standards Act vests the Council with broad powers to promote standardisation in industry and commerce, including the power to make, amend, and revoke Kenya Standards. Section 10D of the Standards Act empowers the Council to prescribe standards with which manufacturers must comply, whilst Sections 12 and 12A of the Standards Act make provision for the submission of product samples for testing and the establishment of laboratories for that purpose. These provisions collectively establish a comprehensive and coherent framework for the setting, testing, and enforcement of product standards, which is a framework that readily encompasses the regulation of constituents, additives, toxicity, emissions, and component safety in ENDS and tobacco products. The purported conferral of overlapping standard-setting powers upon the Cabinet Secretary under Section 26(1A) gives rise to a direct conflict with the regime established under the Standards Act. Section 21 of the Standards Act resolves such conflicts unequivocally, providing that where there is a conflict between the provisions of a specification declared to be a Kenya Standard under Section 9(1) and a specification made or declared under any other written law, the Kenya Standard shall prevail. It follows that any regulations made by the Cabinet Secretary under Section 26(1A) that purport to prescribe standards already within the competence of KEBS would, to the extent of any inconsistency, be subordinate to and overridden by the relevant Kenya Standards. A multi-faceted government approach to ENDS products would ensure a cohesive regulatory framework for these products. Such an approach could involve wide consultations with other state departments and agencies for comments on the legislative proposals. In addition to the same, and to facilitate easier regional trade, the Kenyan Standards Act is also read and adopted

with reference to the East African Community's SQMT Act, 2006, which ensures standardisation, quality assurance, and testing of products produced or traded in the East African Community to facilitate industrial development and trade. **Further**, to avoid divergent national technical requirements and to facilitate regional trade, any product specifications, testing methods, and conformity assessment requirements for ENDS and related products should, where practicable, be aligned with the East African Standards (EAS) developed through the East African Standards Committee and adopted through the KEBS/Council framework. This approach supports harmonization under the EAC SQMT Act, 2006, reduces the risk of technical barriers to trade, and promotes predictable compliance for manufacturers and importers operating across the EAC. Specifically, the EAC SQMT Act, 2006 aims to: harmonize national and East African standards with international standards to reduce costs, enhance compliance and develop trade opportunities (emphasis ours); and facilitate regional and international trade. Although KEBS is referenced for product testing under the amended Section 14E of the Bill, it does not retain decision making authority, thereby undermining its regulatory and institutional role. Therefore, any conflict with both the Standards Act and the EAC SQMT Act, 2006 should be carefully avoided within the Bill. Accordingly, the regulation of the technical standards matters enumerated in Section 26(1A) (a), (b), (c), (d), and (f) should properly be reserved to KEBS and the Council acting under the Standards Act in conjunction with the East African Standards Committee, in order to avoid regulatory duplication, ensure technical coherence, and give full effect to the supremacy of Kenya Standards as Parliament intended under Section 21 of the Standards Act. **This regulatory alignment should be made at the Committee stage before the** Second Reading. Legal opinions and legal advice should also be sought from the proposed TCAC Legal Counsel, or the current Tobacco Control Board ("TCB") as well as the State Law Office. Any technical limits, testing methods, or approval criteria prescribed by the Cabinet Secretary should be based on or aligned with standards developed or adopted under the Standards Act and EAC SQMT Act. **They therefore propose the entire deletion of Sections 26(1A) (a), (b), (c), (d), and (f) of the Bill**, and **further alignment** for product samples, testing and standardisation with the draft KEBS standards and KEBS, for smokeless tobacco products, ENDS and other tobacco products.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the concern and resolved that there is no conflict of laws. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

17) ADRA Advocates LLP submitted as follows:

222. **Section 2: Definition of "characterising flavour":** Insert a new subsection providing: "The determination of whether a product has a characterising flavour shall be made by an independent technical panel, appointed by the Kenya Bureau of Standards, using objective, reproducible sensory testing methodology prescribed by regulations made under section 53."

Amend paragraph (a) to read: "is clearly noticeable before, during or after consumption of the product, as determined by an independent technical panel using prescribed methodology."

Justification: The principle of legality, deriving from Article 50(2)(n) of the Constitution, requires that offences be defined with sufficient certainty. A manufacturer must be able to objectively determine whether its product is compliant. Subjective standards invite arbitrary enforcement contrary to Article 47 (fair administrative action). The EU Tobacco Products Directive (2014/40/EU) employs an independent advisory panel for characterising-flavour determinations – a proportionate model that provides legal certainty.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the words "clearly noticeable" from the definition of "characterising flavour" as the words are vague and may lead to challenges in enforcement and implementation of the Act. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

223. **Section 2: Definition of "electronic cigarette":** Insert a proviso: "Provided that 'electronic cigarette' does not include any product that heats processed tobacco without combustion or vaporisation of a nicotine-containing liquid."

Justification: Regulatory clarity requires that definitions correspond to the actual characteristics of the products they regulate. The UK Tobacco and Vapes Act 2026 distinguishes between vaping products and heated tobacco products. Applying vapour-product technical requirements (tank volume, refill volume) to HTPs is irrational and disproportionate under Article 24 of the Constitution.

Committee Resolution: The Committee did not adopt the proposal. The WHO FCTC does not provide for a statutory risk continuum, and the Bill already addresses product risk through the pre-market approval and testing regime in sections 14C–14I, under which each product is assessed individually.

224. **Section 2: Definition of "electronic nicotine delivery system":** Amend the definition to read: "'electronic nicotine delivery system' means an electronic device that may be used to deliver nicotine vapour to the person inhaling from the device, including an electronic cigarette, an e-cigar, e-hookah, and a pipe." Delete the words "or other substances".

Justification: Article 24 requires a rational connection between a limitation and its purpose. The concern is that extending tobacco legislation to devices used exclusively for non-nicotine, non-tobacco substances may be overbroad unless Parliament articulates the public-health nexus and scope clearly.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the definition of "electronic nicotine delivery system" in Clause 3 already applies to devices "whether or not the substance contains nicotine". The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling. The Committee resolved to exclude nicotine products that are approved as a tobacco

cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

225. **Section 2: Amended definition of "smoking":** Amend the definition to read: "'smoking' means inhaling or exhaling the smoke or vapour of any tobacco product or nicotine-containing product, and includes the holding of, or control over, any ignited or activated tobacco product, device containing an ignited or activated tobacco product, or electronic nicotine delivery system." Delete references to "any other substance delivered through electronic means" and "other substances via vaporising".
Justification: Article 24 requires that limitations be no broader than necessary. The Act regulates tobacco products; extending the definition of smoking to all electronically delivered substances is disproportionate. The limitation must have a rational nexus to the legislative purpose (BAT Kenya v. Ministry of Health, Supreme Court Petition No. 5 of 2017).
Committee Resolution: The Committee did not adopt the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

226. **Section 2: Definition of "tobacco product":** Retain the existing definition of "tobacco product" for products composed in whole or in part of tobacco. Create a new, distinct category: "nicotine product" means a product that contains nicotine but is not composed in whole or in part of tobacco, including electronic nicotine delivery systems, nicotine pouches, and the solutions or liquids intended for use in such devices. Provide that Parts IV, V, and VI apply to nicotine products only to the extent specifically provided, and empower the Cabinet Secretary to make regulations prescribing proportionate requirements for nicotine products distinct from those applicable to tobacco products.
Justification: Sweden's Parliament formally enshrined tobacco harm reduction in public health policy (December 2024), acknowledging that combustible products carry greater health risks than smokefree alternatives. Sweden has Europe's lowest smoking prevalence (5.8%) and 44% lower tobacco-related mortality than the EU average. New Zealand classified vaping as "much less harmful than smoking" and regulates it proportionately under separate provisions of the Smokefree Environments and Regulated Products Act 2020. Adult smoking rates declined from 16.4% to 6.8%. The UK Tobacco and Vapes Act 2026 distinguishes between tobacco products, vaping products, and nicotine products, applying differentiated regulatory requirements to each category. A blanket conflation fails the Article 24 proportionality test: it is not the least restrictive means of achieving the legitimate objective of public health protection.
Committee Resolution: The Committee adopted the proposal in part. The Committee noted that the definition of "tobacco product" in Clause 3 includes nicotine from any source, synthetic nicotine and nicotine analogues. The Committee further resolved to include a definition of "nicotine product". The Committee did not adopt a separate risk-based regulatory category. The Bill already provides for pre-market approval and testing of each

product (sections 14C–14I), in which the risk of a product is assessed, and WHO's position is that e-cigarettes and nicotine pouches are harmful and not safe, particularly for young people.

227. **Clause 5: Proposed section 5A, Membership of the Tobacco Control Advisory Committee:** Insert a new paragraph: "one person with expertise in product science, toxicology or standards, nominated by the Kenya Bureau of Standards."
Justification: The pre-market approval regime in sections 14C–14I and the product-standards provisions require technically informed advice on composition, emissions, toxicity and conformity testing. KEBS-nominated expertise would support objective and coordinated decision-making.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

228. **Clause 7(a): Section 7(2)(f), Solatium compensatory contribution:** Amend section 7(2)(f) to require regulations prescribing the methodology, applicable base, payment frequency, review procedure and differentiated contribution rates, following public consultation and a regulatory impact assessment.
Justification: The contribution is not described in the Bill as a regulatory fee. The central drafting concern is the absence of a statutory methodology, ceiling, review process and procedural safeguards for determining the solatium contribution.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

229. **Section 7(2)(f): Broadened solatium:** Amend to provide: "The solatium shall be determined on a risk-proportionate basis, with the Committee prescribing differentiated contribution rates for combustible tobacco products and non-combustible nicotine products, having regard to the relative health risks of each product category."
Justification: The amendment broadens the solatium from "cigarette manufacturers or importers" to "tobacco product manufacturers or importers." Given the expanded definition of "tobacco product," these captures ENDS and nicotine pouch manufacturers. Imposing identical financial obligations on manufacturers of products with materially different risk profiles is disproportionate. Sweden's risk-proportionate taxation model raises excise on combustible tobacco by 9% while reducing the tax on snus by 20%. The IMF (March 2025) has called for nicotine taxation to "better align with the harm they cause." Imposing equal solatium burdens on products with unequal risk profiles is inconsistent with this principle and fails the Article 24 least-restrictive-means test.
Committee Resolution: The Committee did not adopt the proposal. Risk is assessed under the product-approval provisions, and an overarching principle of risk-proportionality could be

used to weaken controls on addictive products. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

230. **Section 8(3)(da): Annual report on research:** Amend to provide: "The annual report shall include details of the research methodology employed, and all research findings published under this section shall have been subjected to independent peer review by qualified experts in the relevant scientific disciplines."
Justification: Publicly funded research used to inform regulatory policy should meet minimum standards of scientific rigour. Independent peer review is a recognised safeguard against methodological bias and is consistent with the FCTC's emphasis on evidence-based policy-making.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that Clause 8 requires an annual report on research activities and programmes, including research findings and their impact.

231. **Section 12: Tax and price policies:** Insert a new paragraph requiring the Cabinet Secretary for the National Treasury, before materially adjusting tax measures under section 12, to conduct an appropriate impact assessment and consult relevant public-health, revenue, industry and consumer stakeholders. Add a new paragraph requiring tax measures to have regard to the relative risks of combustible and non-combustible products, while remaining consistent with constitutional and statutory budget-making procedures.
Justification: Sweden's risk-proportionate approach (cigarettes +9%, snus -20%) has contributed to Europe's lowest smoking prevalence (5.8%). The IMF (March 2025) advocates for risk-proportionate nicotine taxation. The Statutory Instruments Act, Cap. 2A requires regulatory impact assessment for subsidiary legislation. This should extend to tax-rate adjustments with significant market impact.
Committee Resolution: The Committee did not adopt the proposal. Excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be varied through the legislative process for tax measures under Articles 114, 209 and 210 of the Constitution. The Committee noted that the Statutory Instruments Act, Cap. 2A requires regulatory impact assessment and public consultation before regulations of significant impact are made. The Committee did not adopt a separate risk-based regulatory category. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

232. **Section 14A: Requirements for electronic nicotine delivery systems:** Amend sections 14A(a) and (b) to delegate nicotine concentration limits and volume caps to regulations made under section 53, based on scientific evidence and after consultation with KEBS and stakeholders, rather than fixing them in primary legislation. Amend section 14A(d) to read:

"the nicotine-containing liquid is manufactured using ingredients of pharmaceutical-grade purity or meeting such ISO or KEBS standards as may be prescribed; provided that, pending the prescription of standards by the Cabinet Secretary, compliance with ISO 20714:2019 or equivalent shall be deemed sufficient." Correct the cross-reference in section 14A(1)(c) from "section 14F" to "section 14J."

Justification: Fixing technical product parameters in primary legislation, rather than delegating them to regulations, prevents evidence-based adjustment as scientific understanding evolves. The UK Tobacco and Vapes Act 2026 delegates detailed product requirements to regulations made after consultation. The principle against delegation requires that delegated powers include default standards or criteria, not a blank cheque. The cross-reference in section 14A(1)(c) to section 14F for specified additives is erroneous. The relevant provision is section 14J.

Committee Resolution: The Committee did not adopt the proposal to delegate the nicotine concentration limits and volume caps to regulations. The Committee resolved that the limits on volume and nicotine concentration be set out in the Act itself, to promote legal certainty and ease of implementation and enforcement. The Committee further resolved that the detailed specifications on nicotine purity and the grade of carrier liquids and oils shall be prescribed by the Cabinet Secretary in regulations under section 53(1A). The Committee adopted the proposal to correct the cross-referencing in section 14A(1)(c) to refer to section 14J.

233. **Section 14B: Requirements for nicotine pouches:** Amend section 14B(1)(c) to permit the 20 mg statutory default to be varied by regulations made under section 53, following scientific review, public consultation and advice from KEBS. Retain 20 milligrams per pouch as the default ceiling pending any validly made regulations.

Justification: Sweden's harm reduction success is built on adult access to effective nicotine products. Unnecessarily restrictive caps, fixed in primary legislation, undermine the potential for reduced-risk products to displace combustible tobacco. Delegation to regulations made after scientific consultation is the proportionate approach adopted in the UK and the EU.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

234. **Sections 14C to 14F: Pre-market approval regime:** Insert statutory criteria: "The Cabinet Secretary shall approve a product if it complies with the requirements of this Act and the regulations made thereunder and does not pose an unacceptable risk to public health." **Insert an appeal mechanism:** "A person aggrieved by a decision of the Cabinet Secretary under this Part may appeal to the High Court within thirty days of the decision." **Insert deemed approval:** "Where the Cabinet Secretary fails to communicate a decision within ninety days of a complete application, the product shall be deemed approved." Insert confidentiality provisions: "Information submitted under this Part that is designated by the

applicant as commercially sensitive shall be treated as confidential and shall not be disclosed without the applicant's written consent, except as required by law." **Retain the section 14D(1)** cross-reference to section 14C(1) as printed in the Bill. Amend section 14C(4): extend the transitional period to twenty-four months and insert a safe-harbour provision: "Products lawfully manufactured or imported before commencement may continue to be manufactured, imported, and sold pending determination of the approval application, including any appeal." **Insert in section 14F**: "The manufacturer shall be afforded a reasonable opportunity to make representations before the Cabinet Secretary makes a decision to decline approval and may appeal a decision to decline approval to the High Court within thirty days." **Justification**: Article 47 of the Constitution and the Fair Administrative Action Act, 2015 require that administrative action be procedurally fair, taken on lawful grounds, and subject to reasons and review. Unfettered discretion without statutory criteria violates these requirements. A pre-market approval regime without deemed-approval provisions enables indefinite regulatory delay that functions as a de facto ban, contrary to Article 40 (right to property) and Article 46 (consumer rights). The 3-month transitional window for existing products risks supply disruption to adult consumers, creating a vacuum likely to be filled by illicit products.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L. The Committee did not adopt the proposal on deemed approval, as deemed approval of nicotine products that have not been assessed would defeat the purpose of the approval regime and the protection of public health and any such delay that may occur is remedied through Article 47 of the Constitution and the Fair Administrative Action Act, Cap. 7L. The Committee resolved that a transitional period shall be provided to allow stock lawfully on the market before commencement to be sold or withdrawn but shall not apply to products prohibited under section 14B.

235. **Section 14G: Dealing in unapproved products:** Amend the penalty provision to read: "... a fine not exceeding one million Kenyan shillings or five per cent of the person's gross turnover derived from the unapproved product in the twelve months preceding the offence, whichever is higher." Insert graduated penalties: a warning for a first offence; the fine for a second offence; imprisonment only for a third or subsequent offence.

Justification: Article 24 requires that limitations, including penalties, be proportionate. A penalty calculated on total gross turnover irrespective of the offending product's share of the business is arbitrary and disproportionate, particularly for small and medium enterprises.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the penalties in the Tobacco Control Act and the proposed Bill are maximum penalties, expressed as fines or terms of imprisonment "not exceeding" the amounts stated. The court therefore retains the discretion to impose a lesser sentence that reflects the circumstances of

each case, including whether the breach was a first offence, procedural in nature or committed without intent.

236. **Section 14H: Banning of products:** Amend to provide: "Before banning a product under this section, the Cabinet Secretary shall give the manufacturer written notice specifying the grounds for the proposed ban; afford the manufacturer a reasonable opportunity to make written representations; provide written reasons for the decision; and the decision shall be subject to appeal to the High Court within thirty days."
Justification: Article 47 of the Constitution and the Fair Administrative Action Act require adequate notice, an opportunity to be heard and written reasons where administrative action adversely affects rights or fundamental freedoms. The absence of express safeguards creates a material constitutional vulnerability.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the powers of the Cabinet Secretary should be assigned to the Board, limiting the Cabinet Secretary functions to issuing policy guidelines and direction under the Act. The Committee resolved that decisions shall be accompanied by written reasons and noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

237. **Section 14I: List of approved and banned products:** Insert: "An approval granted under section 14F shall be valid for a minimum period of five years, renewable upon application. Renewal shall be granted unless the product is found to no longer comply with the requirements of this Act."
Justification: Regulatory predictability is essential for business planning and investment. Unreasonably short validity periods may amount to a de facto prohibition and should be assessed against Article 24, Article 40, Article 46 and Article 47 of the Constitution, rather than being framed as a freestanding "right to trade" under Article 43.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the validity period of an approval granted under section 14F, and how it is renewed, is a procedural and administrative matter better dealt with in regulations as proposed under clause 26 of the Bill.

238. **Section 14J: Additives and characterising flavours:** Amend paragraph (f) to read: "additives which result in a characterising flavour that has been determined, on the basis of scientific evidence, to have particular appeal to persons under the age of eighteen years." Insert a proviso: "Provided that paragraph (f) shall not apply to nicotine products within the meaning of this Act that are not composed of tobacco, pending the making of regulations under section 53 prescribing the permitted flavours for such products." Determinations under paragraph (f) to be made by the independent technical panel proposed for section 2.
Justification: Sweden and New Zealand demonstrate that adult access to flavoured reduced-risk products supports smoking cessation and public health improvement. Sweden's snus market, which includes flavoured products, has contributed to the lowest smoking prevalence

in Europe (5.8%). A blanket flavour ban is not the least restrictive means of protecting youth. Targeted restrictions on specific youth-appealing flavours, combined with age-of-sale enforcement, achieve the youth-protection objective without denying adults access to switching aids.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

239. **Section 15(5): Product designs appealing to young persons:** Amend to provide: "The Cabinet Secretary shall, by regulations, prescribe objective criteria for determining whether a product design has particular appeal to persons under the age of eighteen years." Insert a safe-harbour provision: "A manufacturer shall not be liable under this subsection if it demonstrates that the product was marketed exclusively through age-verified adult channels and was not marketed, advertised, or promoted in a manner directed at persons under the age of eighteen years."

Justification: The principle of legality (Article 50(2)(n)) requires that criminal offences be defined with sufficient certainty. "Popular youth motifs" and "reasonably appeal" are too vague to render compliance determinate. Objective criteria prescribed by regulation, as in the UK model, provide legal certainty.

Committee Resolution: The Committee did not adopt the proposal. The Committee retained the prohibition of youth-appealing designs in section 15.

240. **Section 17A: Hawking and mobile vending:** Insert an exemption: "This section does not apply to the delivery or distribution of tobacco products between persons licensed under Section 20A."

Justification: The prohibition must be proportionate to its purpose (preventing uncontrolled street-level sales and youth access). Capturing legitimate supply-chain logistics within its scope is irrational and disrupts lawful commerce without advancing the stated public health objective.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that section 17A targets the sale of tobacco products to consumers through hawking and mobile vending and does not extend to distribution between licensed persons, which is regulated under section 20A.

241. **Section 19A: Online sales prohibition:** Replace the total ban with a regulated online-sales framework: "A person may sell tobacco products, nicotine pouches, or electronic nicotine delivery systems online only through a platform that employs robust age-verification at the point of sale and at the point of delivery; is operated by a person licensed under section 20A; does not permit advertising or promotion beyond factual product information; and complies with such further requirements as may be prescribed by regulations." Insert penalties for failure to verify age in online sales.

Justification: Australia's experience provides a cautionary comparator: available sources report a substantial illicit tobacco and vape market, with industry-commissioned estimates placing illicit tobacco at roughly 39 to 40 per cent of consumption and government-linked reporting estimating the illicit tobacco market at approximately AUD $4.0 billion in 2023/2024. Reporting has also linked the market to more than 200 arson attacks. The UK and New Zealand permit regulated online sales with age-verification requirements, achieving youth protection without a total channel ban. A blanket ban raises Article 24 proportionality concerns because less restrictive alternatives, including age-verified online sales, may achieve the youth-protection objective. The ban may also affect protected commercial, property, consumer, and administrative-law interests under Article 40, 46 and 47 of the Constitution.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

242. **Clause 17: Section 20A, County licensing of premises:** Amend section 20A to require nationally harmonised minimum standards for county licensing, including application criteria, fees, validity periods, renewal, decision timelines and mutual recognition where appropriate. Provide for a coordinated single-window system between the Ministry and county governments.
Justification: Article 209(5) of the Constitution prohibits taxation or licensing that prejudices national economic policies or economic activities across county boundaries. The EAC Common Market Protocol obliges Kenya to eliminate non-tariff barriers to intra-community trade. Fragmented county regimes risk creating de facto non-tariff barriers contrary to these obligations.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures and timelines for issuing licences are a matter for county legislation. The Committee did not adopt mutual recognition of licences across counties.

243. **Section 21(2A): No dispensation of warning requirements:** Amend to provide: "Provided that the Cabinet Secretary may, on the recommendation of the Committee and after public consultation, prescribe differentiated health warnings for distinct product categories, including nicotine products, based on scientific evidence of relative risk."
Justification: Risk-proportionate health communications are essential to informed consumer choice. The UK model distinguishes between warnings for cigarettes, vaping products, and nicotine products. Misleading consumers into believing that all products carry identical risks undermines the public health objective of encouraging switching from combustible tobacco.
Committee Resolution: The Committee did not adopt the proposal. The 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings

in Clause 23, are retained and apply to electronic nicotine delivery systems and nicotine pouches as provided in the Bill.

244. **Clause 19: Sections 21A and 21B, Registration of dealers and prohibition of single-use plastics:** Amend section 21A to specify: (a) clear registration criteria; (b) a decision timeline of not more than sixty days; (c) grounds for refusal; (d) renewal procedures; and (e) a right of appeal to the High Court within thirty days of a refusal.
Amend section 21B to define "single-use plastics" by reference to KEBS or ISO standards; provide a transition period of at least twenty-four months for manufacturers to redesign products and packaging; and clarify that the prohibition targets single-use plastic components, not disposable electronic delivery systems as a product category.
Justification: Registration and environmental controls should be sufficiently precise to permit compliance and should include fair administrative procedures. Section 21B requires clear scope, objective standards and a workable implementation period.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that the manner of registration is an implementation matter that shall be addressed through regulations made by the Cabinet Secretary. The Committee did not adopt the proposal to narrow section 21B. Disposable nicotine devices and packaging made with single-use plastics pose an environmental and public-health hazard particular to these products. The Committee resolved that implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024.

245. **Section 25(2): Digital and social media advertising ban:** Insert a proviso: "Provided that this subsection shall not apply to factual, non-promotional communications concerning tobacco or nicotine products that are: directed exclusively to persons over the age of eighteen years through age-gated digital platforms; limited to factual information regarding the nature, characteristics, and availability of the product; and do not include lifestyle advertising, testimonials, endorsements, or any content directed at persons under the age of eighteen years."
Justification: As "information advertising" is deleted by clause 3(d), such an exception would need to be stated expressly.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC. Clauses 20 and 21 are retained.

246. **Section 25(3): Influencer and brand ambassador ban:** Amend to provide that "No person shall promote tobacco or a tobacco product to consumers through influencers, brand ambassadors, or similar entities." Insert a proviso: "This subsection does not apply to: communications between manufacturers, wholesalers, and licensed retailers in the ordinary

course of trade; presentations at scientific or regulatory conferences by experts, howsoever remunerated; or communications required by law, including those to regulatory authorities."
Justification: A prohibition on consumer-facing influencer marketing is a proportionate youth-protection measure. However, extending it to all communications, including legitimate trade, scientific, and regulatory discourse, is overbroad and restricts freedom of expression (Article 33) beyond what is necessary to achieve the legitimate objective.
Committee Resolution: The Committee did not adopt the proposal. Clauses 20 and 21 are retained. The Committee noted that ordinary commercial dealings within the supply chain are not directed at consumers and are not intended to be restricted under the Act.

247. **Section 26(1)(ca): Free samples prohibition:** Insert a proviso: "Provided that this paragraph shall not prohibit a licensed retailer from permitting an adult consumer to test a product at the licensed premises, subject to age verification in accordance with section 15(4); limitation to one sample per consumer per visit; and such further conditions as may be prescribed by regulations."
Justification: New Zealand and the UK permit controlled product-testing at licensed adult-only premises as a proportionate measure supporting informed consumer switching. A blanket prohibition, without any exemption for controlled adult testing, is not the least restrictive means of achieving the youth-protection objective.
Committee Resolution: The Committee did not adopt the proposal. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

Clause 22: Section 33(2), Prohibited smoking areas: Insert a new subsection: "(2B) The restrictions in subsection (2) shall, insofar as they apply to the use of electronic nicotine delivery systems and nicotine pouches, be subject to regulations made under section 53, which may provide for differentiated restrictions having regard to the scientific evidence on the risks of second-hand exposure to vapour as distinct from combustible-tobacco smoke." Pending the making of such regulations, the restrictions applicable to ENDS/nicotine pouches should align with those in subsection (2)(b) (designated-area exemption), not subsection (2)(a) (permanent prohibition).
Justification: Public Health England has concluded that vaping is at least 95% less harmful than smoking. The Lancet Regional Health – Western Pacific (2025) confirms that second-hand vapour exposure is qualitatively and quantitatively different from second-hand smoke. Applying identical restrictions without evidence of equivalent harm fails the Article 24 proportionality test.
Committee Resolution: The Committee did not adopt the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling. Clauses 22 and 24 expand smoke-free places and extend them to electronic nicotine delivery systems, and the Committee resolved to retain them.

248. **Section 34A(1)(d): Health warning:** Amend to read: "(d) a statement that the products are not risk-free and contain nicotine, which is addictive." Delete the words "not a safe alternative to traditional tobacco products and still pose health risks".
Justification: Risk communication must be accurate and evidence-based. A warning implying risk equivalence between vapour/pouch products and combustible tobacco actively misinforms consumers. New Zealand's regulatory framework explicitly classifies vaping as "much less harmful than smoking." The UK Tobacco and Vapes Act 2026 avoids language implying risk equivalence between product categories.
Committee Resolution: The Committee did not adopt the proposal to dilute the warning. The format, size and placement of point-of-sale warnings shall be prescribed in regulations, and the Bill shall provide a reasonable transitional period for compliance.

249. **Section 53(1A): Expanded regulation-making powers:** Insert: "Regulations made under subsection (1A) shall: be subject to mandatory public consultation for a period of not less than sixty days; be accompanied by a Regulatory Impact Assessment; be laid before the National Assembly in accordance with the Statutory Instruments Act, Cap. 2A; and be made in coordination with the Kenya Bureau of Standards to avoid duplication of regulatory oversight."
Justification: The Statutory Instruments Act, Cap. 2A requires that subsidiary legislation be laid before Parliament. The Constitution (Article 94(6)) requires that delegated powers include adequate constraints. Mandatory public consultation is best practice for regulatory governance (OECD Principles for Regulatory Quality and Performance). KEBS coordination prevents duplicative testing and standard-setting.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the Statutory Instruments Act, Cap. 2A requires regulatory impact assessment and public consultation before regulations of significant impact are made. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

18) Institute of Economic Affairs submitted as follows:

250. Clause 3(c) (definition of "ingredients"): The new definition expands the term to bring in tobacco, nicotine and the chemicals used for making e-cigarettes.

251. **Justification:** This enables the tobacco control institutions to legally proffer charges and sanctions on the use of these items.
Committee Resolution: The Committee noted the support for the proposed amendment. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

252. Clause 3(d) (definition of "manager"): The new definition collapses the identification of locations such as a cinema or health institution and brings clarity to the term, which refers to

the owner, occupier, lessee or the person in charge or in control of the specified institution, place or premises.

Justification: Any individual in a position of authority will now be liable to enforce the rules and regulations relating to tobacco control within and around their premises.

Committee Resolution: The Committee noted the support for the proposed amendment.

253. Clause 3(g) (definition of "smoking"): The new definition takes into consideration vapes, e-cigarettes and devices containing electronic delivery of tobacco-related products.

Justification: It allows tobacco control institutions to institute measures for the use of such products in the market, and penalties for non-compliance.

Committee Resolution: The Committee noted the support for the proposed amendment. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

254. Clause 5 (section 5), establishment of the Tobacco Control Advisory Committee: The membership has been reduced from 16 members under the existing framework to 10 members under the proposed structure, a reduction of approximately 37.5 per cent. This signals a shift in the philosophy underlying the institution, from broad representation and stakeholder inclusion to a smaller body expected to provide specialised advice and facilitate more efficient decision-making.

Justification: The existing Tobacco Control Board was established as a broad, multi-sectoral institution bringing together representatives from health, law, research, agriculture, environmental management, local government, professional bodies, civil society and other stakeholder groups. Its replacement with a Tobacco Control Advisory Committee represents a movement towards a smaller and more focused institutional arrangement.

Committee Resolution: The Committee noted the submission. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

255. Clause 5 (section 5A), membership of the Committee: Noting that the Committee's mandate is advisory, consideration should be given to whether both the Principal Secretary responsible for public health and the Director-General for Health are required as permanent members, or whether one representative could adequately provide health-sector leadership while the Committee obtains additional technical input on a needs basis.

Justification: An assessment of the members against the functions of the Committee suggests that some positions may provide similar perspectives. The inclusion of both the Principal Secretary responsible for public health and the Director-General for Health provides both policy and technical representation from the health sector.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-

establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

256. Clause 5 (section 5B), disqualification from membership of the Committee: Given the commercial interests involved in tobacco production and distribution, ensuring that the Committee operates independently is essential for maintaining public confidence in its advice and recommendations. The provision is a significant strengthening of the integrity framework.
Justification: The existing law prohibited members from being affiliated with the tobacco industry or its subsidiaries. The proposed framework expands this restriction to include employees, agents, representatives, persons with direct or indirect financial interests in the tobacco industry, and persons who have contravened conflict-of-interest requirements.
Committee Resolution: The Committee noted the support for the proposed amendment in the Bill.

257. Clause 5 (section 5C), qualifications of the Chairperson: Reinstate the requirement for the Chairperson to hold a degree from a recognised university. Under the existing framework, the Chairperson was required to hold a recognised university degree and possess at least fifteen years of experience in public health, including five years at senior management level.
Justification: The amendment reduces the required public health experience to ten years and removes the explicit requirement for a university degree. While this may provide greater flexibility in identifying candidates, the Chairperson will be expected to guide discussions on complex regulatory issues, coordinate different interests and provide strategic direction on national tobacco-control policy, and should possess appropriate qualifications and experience.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and retain and strengthen the Tobacco Control Board into a body corporate established under the Tobacco Control Act. Further, the Committee resolved to include a degree as a qualification for appointment as Chairperson of the Board.

258. Clause 5 (section 5F), powers of the Committee to regulate its own procedure: The flexibility of allowing the Committee to regulate its own procedures must be balanced against the need for certainty and accountability.
Justification: The removal of statutory provisions on quorum and decision-making procedures leaves open questions on the minimum number of members required to make valid recommendations. The absence of clear provisions on the removal of members may also create uncertainty on how persistent absenteeism, failure to perform duties or breaches of responsibility should be addressed.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that allowing the Board to set its own rules of procedure on matters such as quorum, decision-making and how meetings are run, will enable the Board flexibility without the Act having to be amended.

259. Clause 8 (section 8(3)(da)), publication of annual report: The amendment introduces a requirement to publish annual reports on activities and programmes, research findings and the impact of the programmes undertaken.
Justification: This is a welcome addition as it will enhance transparency and provide a justification for the funding provided, helping to ensure that funds are used prudently and for the intended purpose.
Committee Resolution: The Committee noted the support for the proposed amendment.

260. Clause 12 (proposed section 14A(1)), requirements for electronic nicotine delivery systems: Substitute the entire section 14A(1) with the following: "A person shall not manufacture or place on the market for sale, distribution or use an electronic nicotine delivery system or refill container unless it conforms to the requirements set out in the regulations."
Justification: The specificity of such requirements is best described in the regulations.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the limits on volume and nicotine concentration be set out in the Act itself, to promote legal certainty and ease of implementation and enforcement.

261. Clause 12 (proposed section 14C), approval of tobacco products: Substitute subsection (1) to provide that a person shall not manufacture or import tobacco products unless the person is licensed by the relevant authorities and complies with the requirements of the Act and its regulations; provide that subsection (1) shall also apply to tobacco products which have been substantially modified after their approval; and delete subsection (3).
Justification: Substantial modification of a product results in a new product, which should be subjected to an approvals process. The timelines are long and inconsistent with government policy on ease of doing business in Kenya. The Act should require responsible agencies and persons to process applications expeditiously, and the timelines should be reviewed and shortened to enhance business continuity.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that any delay in administrative decisions is remedied through Article 47 of the Constitution and the Fair Administrative Action Act, Cap. 7L.

262. Clause 12 (proposed section 14D), information to be contained in the request for approval: Delete the section.
Justification: This section should be moved to the regulations and the form attached in the appendix.
Committee Resolution: The Committee adopted the proposal in part. The Committee noted that additional procedural and administrative matters are proposed to be dealt with in regulations as proposed under clause 26 of the Bill.

263. Clause 12 (proposed section 14F), decision on request for approval: Substitute "30 days" for "90 days", and provide that where an approval has been declined and the product was already in the market, the manufacturer or importer shall immediately recall and withdraw the product

from the market and take corrective action to bring the product into conformity with the Act; and that where the manufacturer or importer refuses to comply within 30 days, the Cabinet Secretary shall ban the product.

Justification: Efficiency in government processes should not be lost in bureaucracy. Ninety days is one quarter of a financial year and imposes losses and other costs on business, especially for new entrants who are not earning income at that time. The section should only target products already in the market, and specificity is important to achieve the objectives of the Act.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the proposed new section 14F(2) already places the obligation to withdraw and recall a product on the manufacturer. The Committee resolved that any delay in administrative decisions is remedied through Article 47 of the Constitution and the Fair Administrative Action Act, Cap. 7L.

264. Clause 12 (proposed section 14H), banning of products: Substitute "shall" for "may" to read: "The Cabinet Secretary shall ban any product which does not conform to the requirements of this Act from being manufactured or sold."

Justification: Non-conformity is a grave violation and should have predictable repercussions. This also eliminates chances for abuse of discretion.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the powers of the Cabinet Secretary should be assigned to the Board, limiting the Cabinet Secretary functions to issuing policy guidelines and direction under the Act. The Committee further resolved to provide that the Board shall have power to prohibit the manufacture, sale, distribution or importation of a tobacco product that does not comply with the provisions of the Act.

265. Clause 15 (proposed section 17A(1) and (2)), ban on the sale of tobacco products through hawking, from vehicles and through mobile vending: The ban is, in principle, a welcome addition. However, as mobile vending and hawking are present in low-income areas, the ban does not cut demand and instead moves trade into unlicensed trade outside the licensing power of the Bill. The proposed fines also seem lenient, as such products are of high value.

Justification: For the objective to be achieved, there must be a realistic, fast, licensed retailer access programme, in place of a 90-day waiting period which deters retailers from applying for licences.

Committee Resolution: The Committee noted the support for the proposed amendment. The Committee resolved that providing for a transitional period for hawking and mobile vending would compromise enforcement and implementation of the Act.

266. Clause 16 (proposed section 19A(1) and (2)), ban on the sale of tobacco products, nicotine pouches and electronic nicotine delivery systems through any online platform or e-commerce: Replace the blanket ban with an efficient licensing system for online sales, and require vendors

to use age authentication methods, for example requiring buyers to show identification when making a purchase.

Justification: Properly regulated online sales can be traced, while a ban may push demand towards unregulated sellers, such as those on social media, and the black market. This may not achieve the intended purpose and may instead worsen the situation, since unregulated streams may have an edge.

Committee Resolution: The Committee did not adopt the proposal to remove the ban on online sales. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

267. Clause 23 (proposed section 34A(1)), additional health warnings on premises: The new provisions requiring premises and persons who sell tobacco and nicotine products to prominently display the health effects of these products are more likely to form part of the regulations to actualise the Act, and should be treated as such.

Justification: These are more in the nature of regulations and should be treated as such in making the Bill applicable.

Committee Resolution: The Committee adopted the proposal in part. The format, size and placement of point-of-sale warnings shall be prescribed in regulations, and the Bill shall provide a reasonable transitional period for compliance. The Committee did not adopt the proposal to dilute the warning.

268. Clause 24 (section 35(2)(b)), requirement for ventilation of the designated smoking area: The new subsection is a welcome addition as it states the requirements that premises must adhere to in having a standard designated smoking zone with a fitted ventilation system.

Justification: These requirements should, however, form part of the regulations that premises must adhere to, to ensure that the required standard is met.

Committee Resolution: The Committee noted the support for the proposed amendment.

269. Clause 26 (section 53), Committee recommendation and consultations with county governments in making regulations: Consultations are in order, especially where population health is in focus. However, laws made at the national level should apply to all, and county governments should make their regulations in tandem with the existing law.

Justification: The law, once made at the national level, is supreme and county governments should adhere to it by domesticating it at their level.

Committee Resolution: The Committee noted the support for the proposed amendment.

19) The National Council of Churches of Kenya submitted as follows:

270. **Amend the Long Title:** Amend title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

271. **Clause 3 (section 2 definition of "nicotine pouch"); Clause 12 (proposed section 14B); consequential references in Clauses 16 and 23 and any other clause that regulates, permits or assumes lawful sale of nicotine pouches:** Retain and refine the definition of "nicotine pouch" in section 2 for enforcement clarity, but delete proposed section 14B in its current form and replace it with an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." Further, delete all consequential references that presuppose lawful sale or display of nicotine pouches, including in online sales and retail warning provisions, save only where reference is necessary for seizure, enforcement or offence provisions.

Justification: A prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to conceal, easy to use in smoke-free spaces, and often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified nicotine pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk. WHO has also called for urgent action to ban flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and entrench dependence, especially among children and young people. Retaining a clear definition while prohibiting the product closes loopholes, supports seizure and prosecution, and prevents the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

272. **Clause 3 (definition of "ingredients"):** Retain the expanded definition, but expressly add "constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use", and require disclosure of device-component emissions.

Justification: This should be widened beyond ingredients physically present in the product at the point of sale. For novel nicotine products, major risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the bottled liquid or pouch contents

matter, even where the actual inhaled aerosol contains additional toxicants. The better approach is to regulate both product contents and product disclosures, including emissions and contaminants released in normal use. That aligns the Bill with modern product-regulation practice and makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

273. **Clause 3 (definition of "advertisement"):** Reject the replacement definition. Retain the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics."

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

274. **Clause 3 (new definitions):** Insert new definitions for "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha", and "shisha smoking".

"aerosol" means the emission which is discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat;

"flavouring agent" means any ingredient or additive other than tobacco, that is added to a tobacco product regardless of its source and—

(a) delivered as an accessory to, or as a component of a tobacco product;

(b) enhances the use of a tobacco product; or facilitates the appeal and addiction to a tobacco product.

"plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardized colour and font style;

"principal display area" means the surfaces of any tobacco product multi-stemmed smoking instrument that contains water or other liquid through which the smoke passes before reaching the smoker and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours including apple, grape, guava, lemon and mint; and

"shisha smoking" means a form of consumption of shisha that utilizes a single or multi-stemmed smoking instrument to smoke shisha where the smoke is designed to pass through water or other liquid before reaching the smoker.

Justification: Intended to close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

275. **Clause 3 (definition of "smoking"):** Retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.

Justification: The definition should close the common loophole under which sellers market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. WHO states that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

276. **Clause 3 (definitions: "tobacco product", "characterising flavour"):** Retain and strengthen by defining nicotine analogues functionally, and by extending "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.

Justification: Industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for bans on ingredients that increase attractiveness and palatability. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

277. **Clause 5 (Tobacco Control Advisory Committee):** Remove the KNCCI/business representative seat. Add mandatory public disclosure of interests, agendas and all meetings with industry; prohibit gifts, partnerships and non-essential interactions; and require recusals backed by sanctions. Amend to: "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health." Amend to require nomination by the Cabinet Secretary for Health.

Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in

weakening demand-reduction measures. Article 5.3 requires protection of public health policies from the commercial and other vested interests of the tobacco industry. The current conflict-of-interest wording is useful but insufficient if the Committee still institutionalizes an industry-adjacent nomination route. The safer model is to remove the seat altogether and legislate transparency, limited interactions and enforceable recusals. The Supreme Court has already upheld strong tobacco-control regulations, including limits on interactions between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

278. **Clause 7 (solatium compensatory contribution):** Insert a statutory floor: not less than 2% of the ex-factory value or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation. Require annual publication of collections and use of the Fund. Amend section 7(4) to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support. Insert a new subsection providing that regulations be made for disbursement of the Fund by the Cabinet Secretary under the TCA to MDAs, academic and research institutions, county governments, and Kenyan CSOs engaged in tobacco control. Renumber the current subsection (5) as subsection (6).

Justification: Leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure. Public reporting is also necessary so the Fund is visibly tied to health protection rather than being treated as a negotiable levy. As with regard to disbursement of the fund, the Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement. The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards. At the same time, the Fund remains subject to the broader public finance framework.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of

information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A.

279. **Clause 10 (tax and price policies):** Retain and strengthen by requiring that tobacco taxes move to at least 75% of retail price, with annual adjustment for inflation and income growth; expressly earmark a defined share for tobacco control, cessation and NCD treatment.
Justification: Taxation is the single most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats the highest standard as taxes exceeding 75% of price and emphasizes the importance of maintaining affordability pressure over time. If taxes are not indexed to both inflation and income growth, products can become cheaper in real terms and youth access rises. Revenue earmarking also answers an implementation problem: strong laws fail when enforcement, cessation and surveillance remain unfunded.
Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

280. **Clause 12 (new section 14A: ENDS / e-cigarettes):** Adopt a public-health-maximal position: prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, if Parliament retains them, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets, and a lower nicotine cap of not more than 10 mg/mL.
Justification The present text normalizes market entry for an addictive product class whose public-health risks remain substantial. WHO states plainly that e-cigarettes are harmful, are not safe, expose bystanders to harmful aerosol, and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU 20 mg/mL / 10 mL / 2 mL framework is a minimum regulatory floor, not a best-practice ceiling. Several developed jurisdictions have moved further by restricting flavours, channels of sale or device types, and both the United Kingdom and Belgium have now prohibited disposable vapes. Kenya should not lock a permissive baseline into primary legislation.
Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

281. **Clause 12 (new section 14B: nicotine pouches):** Prohibit non-therapeutic nicotine pouches. In the alternative, regulate them exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the maximum nicotine content to not more than 4 mg per pouch. Replace current 14(B) with the following: No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch. A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Justification: Nicotine pouches are designed for discreet use, are easy to conceal, and are marketed in flavours and formats that strongly appeal to adolescents and young adults. High-dose pouches accelerate dependence and create a misleading image of a cleaner, lower-risk product even though the addiction risk remains substantial. Research already shows that a sizeable minority of young adults are willing to try nicotine pouches and that advertising exposure and favourable perceptions are material drivers of use. If Parliament does not prohibit them, it should at minimum refuse a 20 mg cap and regulate them as strictly as other nicotine products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

282. **Clause 12 (new sections 14C–14I: approval, testing, listing, bans):** Retain and strengthen by requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval/refusal, and a clear appeal and recall process.

Justification: This is one of the Bill's strongest architecture provisions and should be defended. However, a product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and legal compliance before market entry and throughout the product's life cycle. A public register supports consumer protection, customs enforcement and county licensing. Independent testing is especially important for novel nicotine products because industry-submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

283. **Clause 12 (new section 14J: additives and characterising flavours):** Retain and strengthen by expressly covering menthol, cooling agents, sweeteners, concept descriptors,

flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation across all tobacco and nicotine products.

Justification: This clause should be defended as a core youth-protection measure. WHO and the FCTC Secretariat now explicitly call for urgent action against flavours and other design features that increase attractiveness and palatability. Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. A comprehensive ban must therefore be sensory-effect based, not merely name based. The Netherlands' move to tobacco-flavour-only e-liquids and Belgium's move toward tighter vape controls show that developed jurisdictions are moving in the same direction, not away from it.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

284. **Clause 13 (section 15: youth-appealing designs and sales buffer):** Retain the design prohibition and increase the minimum sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b), and (5A) by replacing "eighteen" with "twenty-one".

Justification: The design ban is sound and should be preserved. The distance buffer, however, is too low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children. Kenya already recognizes a 300-metre public-health buffer in alcohol-control law for learning institutions. Using the same benchmark here improves coherence in child-protection legislation and gives administrators and courts a familiar standard. A wider buffer also reduces retailer clustering and the routine normalization of nicotine products near schools.

Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

285. **Clause 16 (new section 19A: online sales):** Retain and strengthen by imposing duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: A simple ban is necessary but not sufficient. Online tobacco and vape commerce often shifts to social media, messaging channels, cross-border websites and intermediary platforms. Without platform obligations, traceability and takedown mechanisms, enforcement becomes reactive and uneven. Comparative practice shows that governments now treat online sales and cross-border e-commerce as a core regulatory frontier. Belgium publicly reports aggressive enforcement against unlawful online vape sales, while the Netherlands prohibits

cross-border online sales of tobacco and e-cigarette products. Kenya should legislate the enforcement chain, not just the prohibited act.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

286. **Clauses 17 and 19 (county licensing and national registration):** Retain the dual public-health gatekeeping model, but require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.

Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the system requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks. This is also consistent with the supply-chain control logic of the Illicit Trade Protocol, which treats licensing, record-keeping and traceability as core anti-diversion tools.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

287. **Clauses 18 and 23 (pack warnings, plain packaging, retail warnings):** Defend the 75% warning rule and plain-packaging power. Extend large pictorial warnings and standardized packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.

Justification: This is a major public-health gain and should not be diluted in the National Assembly. WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognizes plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising. Evidence reviews, including Cochrane, support the conclusion that standardized packaging reduces appeal and may contribute to lower smoking prevalence. Novel products should not be allowed to preserve branding intensity simply because they sit outside traditional cigarette packaging norms.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

288. **Clauses 20 and 21 (digital and indirect advertising/promotion):** Expand into a full-spectrum TAPS ban covering digital content, cross-border advertising aimed at Kenya,

influencer marketing, sponsorship, CSR, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.

Justification: This should be treated as a modern Article 13 clause, not a narrow social-media amendment. The industry now markets through ecosystems: creators, event culture, sponsorship, discounts, product seeding, hashtag campaigns and indirect brand extension. A partial digital ban will be outpaced almost immediately. Article 13 guidance favours a comprehensive ban because partial bans merely displace promotion from one channel to another. WHO's 2025 campaign also focused directly on how flavours, design and marketing tactics are used to addict youth and normalize nicotine use.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

289. **Clauses 22 and 24 (smoke-free places and designated smoking areas):** Delete the designated-smoking-area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with specified outdoor smoke/vape-free perimeters around schools, hospitals, playgrounds and public-building entrances.

Justification: This is the clearest place where the Bill still falls below best practice. The Article 8 guidelines are categorical: there is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Once ENDS and heated products are included, retaining designated rooms also creates an enforcement fiction because aerosol drift, leakage and worker exposure remain. Kenya should move to a clean 100% rule. The Netherlands has explicitly rejected smoking rooms as facilitating smoking and normalizing the behaviour.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

290. **Clause 19 (new section 21B: single-use plastics and disposable products):** Retain and strengthen by expressly banning disposable vapes as a product class, imposing take-back and producer-responsibility obligations for batteries and device waste, and authorising seizure and destruction of non-compliant stock.

Justification: This is a strong environmental-health clause and should be defended. Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste. Comparative developed-country practice is now moving in this direction: the United Kingdom bans single-use vapes and Belgium has totally banned the sale of disposable electronic cigarettes. Kenya should make the environmental rationale explicit and link it to public-health enforcement powers so the clause is not reduced to a symbolic waste measure.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

291. **New Clause for a new Section 21C:** Insert a new section 21C prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.
Justification: This complements the proposed definitional changes on shisha.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

292. **Clause 22:** The DSA model be deleted entirely and move to 100% smoke free indoor and enclosed public places. In the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

293. **Clause 24 (Section 35 (2)(b)(iii)):** If DSAs are retained, require not only certification by a qualified engineer but also approval by the county public health officer, with inspection and approval fees.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

294. **Clause 26 (section 53: regulation-making power):** Further expand section 53 to authorize track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardized packaging rules, and an express bar on delegating state regulatory functions to the tobacco industry.
Justification: Section 53 should be drafted as the Bill's enforcement engine. The more clearly Parliament authorizes disclosure, traceability, recall, seizure, packaging and supply-chain controls, the harder it will be for later regulations to be challenged as ultra vires. The Illicit Trade Protocol is especially important here: it treats licensing, record-keeping, due diligence, tracking and tracing as state functions for securing the supply chain. An express non-delegation clause is prudent because industry-controlled traceability or compliance systems create exactly the conflict Article 5.3 seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

20) The Kenya Private Sector Alliance submitted as follows:

295. **Clause 10:** Amend by removing the prohibition on the sale of tobacco products through licensed-duty free outlets and expressly provide that licensed-duty free retailers operating at international points of exit shall be recognised as distinct category from domestic tobacco products retailers, be exempt from packaging, labelling and product restrictions where the products are intended exclusively for sale to departing international travelers.
Justification: Duty-free retail is export oriented and does not supply the Kenyan market. Maintaining duty-free tobacco product sales preserves aeronautical airport revenues.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that exempting duty-free retailers from packaging, labelling and product requirements would undermine the public health objectives of the Bill and create avenues for illicit trade.

296. **Clause 19:** Allow licensed e-commerce, click-and-collect and verified delivery models with ID authentication at point of sale or deliver.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

297. **Clause 23:** Amend to the new section 34A to harmonize the requirement of displaying of warnings with evidence-aligned messages.
Justification: To prevent creation of a dual-market system, preserve tax base and ensure regulatory visibility rather than suppressing it.
Committee Resolution: The Committee adopted the proposal in part. The format, size and placement of point-of-sale warnings shall be prescribed in regulations, and the Bill shall provide a reasonable transitional period for compliance. The Committee did not adopt the proposal to dilute the warning.

298. Adopt a risk continuum regulatory model distinguishing combustible, heated and non-combustible nicotine products with proportionate regulatory obligations.
Introduce a phased enforcement and implementation sequencing supported by inter-agency coordination mechanisms.
Justification: To avoid unintended behavioral outcomes where harm reduction products are perceived as equivalent to combustible tobacco contrary to scientific consensus.
Committee Resolution: The Committee did not adopt the proposal. The WHO FCTC does not provide for a statutory risk continuum, and the Bill already addresses product risk

through the pre-market approval and testing regime in sections 14C–14I, under which each product is assessed individually.

299. **Issue statutory timelines for issuance of specifications or transition to compliance.**
Justification: To prevent regulatory enforcement before operational readiness.
Introduce a tiered compliance framework distinguishing between tobacco retailers and incidental sellers.
Justification: To avoid disproportionate regulatory burden on SMEs and general trade retailers, supporting proportionality and administrative efficiency in enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to provide a reasonable transitional period within which persons dealing in vaping products shall comply with the Act and the regulations, while noting that section 53 of the Act already empowers the Cabinet Secretary to make regulations on the recommendation of the Board.

300. **Clause 12:** Amend to remove the strict liability on retailers and distributors for dealing in unapproved products by introducing a statutory reasonable defence for retailers and distributors.
Justification: To prevent the imposition of strict liability in a dynamic regulatory environment where compliance information is centrally controlled and may be delayed or incomplete.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the proposed defence, particularly in respect of products not appearing on the banned products list, would permit the sale of unapproved products and undermine the approval regime. The Committee resolved that the Board shall publish and publicize a list of approved and banned products, which enables retailers to verify the status of products before stocking them.

301. Amend to require the CS to publish the list of the initial approved products within six months of commencement of this Act and thereafter maintain real-time updates.
Justification: Without a statutory timeline, enforcement risks becoming operationally premature exposing entities to liabilities without accessible compliance information.
Committee Resolution: The Committee adopted the proposal. The Committee resolved that the register shall be published in the *Gazette* and on the website of the Ministry, kept up to date and accessible to licensed operators.

302. Amend to place liability for recall costs to manufacturers and importers with clearly defined cost-sharing mechanisms only where downstream negligence is demonstrated.
Justification: To ensure risk follows control
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the proposed new section 14F(2) already places the obligation to withdraw and recall a product on the manufacturer, and that liability for recall costs therefore rests with the manufacturer.

303. Amend to require publication of a transitional baseline list of existing lawful products prior to the enforcement of approval obligations.

Justification: To prevent legal products from being considered to be illegal due to administrative delays.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that a transitional period shall be provided to allow stock lawfully on the market before commencement to be sold or withdrawn but shall not apply to products prohibited under section 14B.

21) The Kenya Association of Manufacturers (KAM) submitted as follows:

304. **Under Clause 17:** Since the proposed new Section 20A mandates County Government licensing for all dealers in tobacco and nicotine products (manufacturers, importers, distributors, retailers), therefore, delete the clause.

Justification: KAM explained THAT:

i. These proposals run against the Government of Kenya's commitment to facilitate the ease of doing business, and risk creating significant disruption for compliant enterprises.

ii. This provision introduces unnecessary regulatory duplication, higher compliance costs and administrative inefficiencies.

iii. Further, layering multiple licensing requirements at both national and county levels is likely to result in inconsistent enforcement, regulatory uncertainty and barriers to formal trade, while inadvertently incentivising illicit trade growth, which is already estimated to account for nearly half of the market.

iv. This is in addition to registration and/or licensing by the Ministry of Health for all dealers in tobacco and nicotine products – Section 19 of the Bill, proposed Section 21A to the Act.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

305. **Under Clause 19 (new section 21B: single-use plastics and disposable products)**: **Since** the Bill prohibits tobacco products, packaging or disposable electronic delivery systems that use single-use plastics, **therefore**: delete this clause.

Justification: They clarified THAT:

i. The referenced framework is implemented through national initiatives addressing single-use plastics under the coordination of relevant agencies and Producer Responsibility Organisations (PROs). Kenya has taken a progressive and consultative approach by emphasising producer responsibility, waste management systems, and consumer awareness rather than imposing blanket packaging prohibitions without viable alternatives.

ii. While the objective of addressing plastic pollution is acknowledged and supported, the proposed approach raises significant concerns from a regulatory coherence and policy alignment perspective.

iii. Kenya already has a well-established and comprehensive environmental governance framework under the Environmental Management and Co-ordination Act (EMCA), which provides an economy-wide mechanism for managing plastic waste and packaging materials. This framework is operationalised through binding subsidiary legislation, including the Extended Producer Responsibility (EPR) Regulations, 2021 and the Management and Control of Plastic Packaging Materials Regulations, 2024.

iv. These regulations apply uniformly across all sectors and impose clear obligations on producers, importers, and retailers. These include mandatory registration with NEMA, financing of collection and recycling schemes, licensing of plastic packaging materials, traceability requirements, and progressive redesign of packaging to support circular economy outcomes. Parliament has already endorsed this lifecycle-based, technology-neutral approach as the appropriate vehicle for addressing plastic pollution.

v. Introducing a sector-specific statutory ban within tobacco legislation would cut across this established regime and risks creating regulatory fragmentation. It would effectively subordinate EMCA's coordinating role by singling out one sector for an outright prohibition, while other sectors remain governed by harmonised, proportionate controls under existing environmental law. Such an outcome undermines policy consistency and introduces unnecessary legal misalignment.

vi. Further, the proposed ban does not sufficiently take into account ongoing regulatory implementation processes being led by NEMA. NEMA has consistently communicated that enforcement will focus on EPR compliance, licensing of plastic packaging, and operational take-back schemes.

vii. The proposed ban would therefore disrupt this agreed

viii. compliance pathway and introduce uncertainty for manufacturers, distributors, and retailers alike.

Committee Resolution: The Committee did not adopt the proposal to delete section 21B. Disposable nicotine devices and packaging made with single-use plastics pose an environmental and public-health hazard particular to these products. The Committee resolved that implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024.

306. **Under Clause 12 (new section 21B:** single-use plastics and disposable products), **amend paragraph (f) of the proposed section 14J** in clause 12 to read as follows:

14J. (1) A person shall not manufacture, sell, distribute, or import a tobacco product that contains:

(f) Prohibited flavours, being dessert, candy-like, energy drink, soft drink and alcohol flavours or which are reminiscent of confectionery.

Justification: This is based on the following reasons, THAT:

i. The proposal to completely ban flavours in all tobacco and nicotine products may be counterproductive in a market already characterised by high levels of illicit trade.

ii. Illicit operators currently supply tobacco and nicotine products (including those with child-appealing flavours) with little vulnerability to enforcement action. Such a ban would disproportionately affect compliant businesses while leaving the illicit market largely intact. In practice, this would amount to *de facto* elimination of the legal category, displacing lawful operators and investment while fully expanding the unregulated market.

iii. Further, a uniform prohibition does not sufficiently account for the differing risk profiles and consumer uses of various product categories. International experience suggests that when legal, regulated options are removed, adult consumers often do not stop consumption, but migrate to unregulated and informal supply channels, weakening both public health safeguards and regulatory oversight.

iv. We propose that this section of the Bill be reviewed to strike a balance between prohibition of flavours that could lead to increased attraction of these products to the underage, while protecting and providing for flavours that are essential to the palatability of these products in consumption by adults.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

307. Under **Clause 18 (a),** proposed section 2 and section 2A (b), **delete proposed sections 2 and 2A(b) in clause 18 (a).**

Justification: This is based on the following reasons, THAT:

i. The introduction of plain packaging is likely to exacerbate illicit trade, as it diminishes the ability of consumers, manufacturers, importers and enforcement agencies to easily distinguish legitimate products from illegal products. This measure would undermine traceability, weaken product authentication and complicate enforcement efforts.

ii. The Ministry in June 2025 gazetted new packaging requirements following a long process of stakeholder consultations. These changes are set to be fully implemented in the course of 2026. Requiring new packaging changes through the current Bill will have the effect of creating significant instability for legitimate industry at a time when illicit trade is growing. This instability and frequent/unpredictable changes create a fertile ground for non-compliance and growth of illicit trade.

Committee Resolution: The Committee did not adopt the proposal. The 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, are retained and apply to electronic nicotine delivery systems and nicotine pouches as provided in the Bill.

22) **The Kenya National Chamber of Commerce and Industry (KNCCI) submitted as follows:**

(a) **Clause 3 (Interpretation)**: Insert definitions of "combustible tobacco product", "non-combustible nicotine product", "electronic nicotine delivery system", "nicotine pouch product" and "risk continuum", so that the Bill distinguishes between combustible tobacco and non-combustible nicotine products.

Justification: The Bill applies a single regulatory classification to materially different products and collapses the risk continuum into one category. The definitions would provide the legal foundation for risk-proportionate regulation, avoid over-inclusive prohibition and align with frameworks such as those of the United Kingdom and New Zealand, and would avoid arbitrariness under Article 27 of the Constitution.

Committee Resolution: The Committee did not adopt the proposal. The WHO FCTC does not provide for a statutory risk continuum, and the Bill already addresses product risk through the pre-market approval and testing regime in sections 14C–14I, under which each product is assessed individually.

308. **Clause 5 (Advisory Committee representation)**: Retain section 5A(1)(g) providing a seat for KNCCI on the Tobacco Control Advisory Committee.

Justification: Ensures private sector sustainability, MSME realities and commercial balance are considered in health policy.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

309. **Clause 5 (composition of the Advisory Committee):** Include representatives of government, public health, private sector operators and consumer organisations with demonstrable national representation.

Justification: The Committee is heavily weighted towards State actors, with limited representation of private sector value-chain actors and consumers who are directly exposed to regulatory outcomes. Broader membership would improve legitimacy, stakeholder balance, implementation realism and reduce the risk of regulatory capture.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

310. **Clause 5 and Clause 26 (function of the Advisory Committee):** Expand the mandate so that the Committee reviews regulatory impact assessments and implementation feasibility before regulations are issued.

Justification: The Committee's role is largely advisory, with no mandate to assess implementation feasibility, compliance burden or economic impact of regulations. The amendment would strengthen the quality of secondary legislation.
Committee Resolution: The Committee adopted the proposal in part. The Committee noted that the Statutory Instruments Act, Cap. 2A requires regulatory impact assessment and public consultation before regulations of significant impact are made and the Board may advise on proposed regulations as part of that process.

311. **Clause 12 (new principle):** Insert a risk continuum principle: "Regulatory measures under this Act shall be proportionate to the relative risk of products as determined by scientific evidence and public health assessment."
Justification: The Bill does not recognise the scientifically established risk continuum between combustible and non-combustible nicotine products. The principle would embed harm-reduction doctrine in statute, align regulation with evidence-based public health policy and avoid classification-based regulation.
Committee Resolution: The Committee did not adopt the proposal for the reasons given in the resolution on the definitions above. Risk is assessed under the product-approval provisions, and an overarching principle of risk-proportionality could be used to weaken controls on addictive products.

312. **Clause 12 (sections 14C–14F: product approval**): Insert a provision that where the Cabinet Secretary fails to communicate a decision within ninety days the application shall be deemed approved, subject to revocation in accordance with due process and written reasons.
Justification: The 90-day approval timeline lacks consequences for administrative inaction, which creates a system where market entry is subject to indefinite regulatory discretion. Legal finality for administrative silence would comply with Article 47 (fair administrative action), prevent regulatory stagnation and reduce investment uncertainty.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that deemed approval of nicotine products that have not been assessed would defeat the purpose of the approval regime and the protection of public health and any such delay that may occur is remedied through Article 47 of the Constitution and the Fair Administrative Action Act, Cap. 7L.

313. **Clause 12 (sections 14C–14G: retailer liability):** Insert that a retailer is not guilty of an offence where, at the time of sale, the product appeared on the approved products register or was not listed on the banned products register and the retailer verified this within thirty days before sale.
Justification: Retailers face criminal liability for stocking unapproved products although they have no access to the approval process, no real-time registry certainty and no control over upstream delays. Liability should follow control and knowledge, protect small businesses and focus sanctions on manufacturers and importers who control product registration.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the proposed defence, particularly in respect of products not appearing on the banned products list, would permit the sale of unapproved products and undermine the approval regime. The Committee resolved that the Board shall publish and publicize a list of approved and banned products, which enables retailers to verify the status of products before stocking them.

314. **Clause 12 (section 14F: recall obligations and cost allocation):** Provide that primary responsibility for recall, withdrawal and associated costs rests with the manufacturer or importer, except where a retailer is proven to have acted negligently or in breach of statutory obligations.
Justification: Recall obligations are imposed downstream, so retailers and distributors bear the financial burden of manufacturing or classification decisions outside their control. Risk should follow control, which reduces small-business exposure and is consistent with product safety regimes elsewhere.
Committee Resolution: The Committee adopted the proposal. The Committee noted that the obligation for withdrawal and recall under the proposed new clause 14F(2) rests with the manufacturer.

315. **Clause 12 (section 14I and14F:** approved and banned products register): Require the Cabinet Secretary to publish the initial register within six months of commencement and to update it on a continuous real-time basis accessible to all licensed operators.
Justification: The Bill requires publication of approved and banned products but gives no timeline, update frequency or transitional arrangements, risking enforcement before operational systems exist. A timeline ensures the regulatory infrastructure exists before liability attaches.
Committee Resolution: The Committee adopted the proposal in part. The register shall be published in the Gazette and on the website of the Ministry, kept up to date and accessible to licensed operators.

316. **New section 14J (transitional market continuity):** Provide that products lawfully on the market before commencement may continue to be sold for twelve months or until determination under section 14F, whichever is earlier.
Justification: The Bill creates immediate risk of cessation for lawfully traded products already in circulation, with no transitional mechanism for stock in retail or wholesale pipelines. A transition prevents regulatory shock, protects sunk inventory costs and is essential for small-business survival.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that a transitional period shall be provided to allow stock lawfully on the market before commencement to be sold or withdrawn but shall not apply to products prohibited under section 14B.

317. **Clause 13 (proposed section 15(5A)):** Delete the proposed restriction on sale within 100 metres of premises primarily serving persons under eighteen years. Youth protection should instead be achieved through age-verification obligations, visible signage, compliance checks and strict penalties for sale to minors.
Justification: A 100-metre radius could, in dense urban and peri-urban centres, operate as a ban on lawful retail across substantial areas and lead to the closure of tens of thousands of licensed businesses, leaving consumer demand intact and increasing the incentive for illicit supply. Measures that address sales to minors are more targeted and capable of producing measurable outcomes.
Committee Resolution: The Committee did not adopt the proposal to delete section 15(5A). Distance restrictions complement, and do not replace, controls on sale to minors, and they reduce the visibility of products near children.

318. **Clause 16 (section 19A: online sales):** Substitute the prohibition with licensed online sales subject to mandatory age verification, identity authentication and compliance monitoring systems approved by the Cabinet Secretary.
Justification: An absolute prohibition eliminates regulated digital commerce channels despite available age-verification technology and risks pushing trade into informal online platforms that are harder to regulate. A controlled compliance architecture would preserve the digital economy and strengthen youth protection through traceable systems.
Committee Resolution: The Committee did not adopt the proposal. Age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online.

319. **Clause 16 (new section 19B: digital commerce regulatory framework):** Require the Cabinet Secretary to establish a regulatory framework for licensed digital tobacco and nicotine product sales, including age verification standards, KYC obligations, audit logs and enforcement protocols.
Justification: The Bill lacks a framework for compliant digital sales channels. A framework would align regulation with the digital economy strategy and prevent a regulatory vacuum that illicit online actors could exploit.
Committee Resolution: The Committee did not adopt the proposal, as it follows from the proposal to permit licensed online sales, which the Committee did not adopt. Enforcement against unlawful online sales shall be addressed through the regulations.

320. **Clause 17 (section 20A: county licensing regime):** The provision introduces dual regulatory framework that would require dealers to obtain tobacco-specific licenses from county governments and secure a separate registration by the Ministry of Health. Provide that county licensing be limited to retail and resale which should remain anchored in the existing county Unified Business Permit while the MOH licensing requirements be limited to manufacturers and importers.

Justification: Separate licences across 47 counties create market fragmentation, inconsistent fee structures and non-harmonised compliance thresholds, which are effectively internal trade barriers. The proposal protects the constitutional principle of national economic integration (Article 10) and ensures small businesses are not burdened by multi-jurisdictional compliance costs.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

321. **Clause 17 (section 20A: licensing timelines):** Provide that a county licensing authority shall issue or refuse a licence within thirty days, failing which the licence is deemed issued pending inspection.

Justification: County licensing authorities are not bound by statutory timelines, so administrative delay could become a de facto barrier to market entry. A timeline enhances predictability, supports small-business entry and enforces Article 47 at county level.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures and timelines for issuing licences are a matter for county legislation.

322. **Clause 19 (section 21A: dealer registration):** KNCCI proposes that national registration be limited to manufacturers and importers.

Justification: A separate dealer registration regime duplicates compliance data for entities already verified through product approval at national level.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

323. **Clause 19 (proposed section 21B: single-use plastics):** Delete section 21B in its entirety and reinforce compliance with the Environmental Management and Co-ordination Act and the Extended Producer Responsibility regime.

Justification: Kenya has an established environmental governance framework under EMCA and the Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024, which impose take-back, registration and design obligations on producers. A plastics prohibition in a public health statute risks overlap and inconsistent administration, and product-by-product prohibitions are difficult to define and police.

Committee Resolution: The Committee did not adopt the proposal to delete section 21B. Disposable nicotine devices and packaging made with single-use plastics pose an environmental and public-health hazard particular to these products. The Committee resolved that

implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024.

324. **Clause 23 (proposed section 34A: point-of-sale warnings):** Simplify the warning to a standardised health notice, and provide that the 14llish regulations within ninety days and that compliance shall commence six months thereafter.
Justification: The point-of-sale warning system is operationally undefined, with no clarity on format, size, placement or implementation timelines, exposing retailers to compliance uncertainty and inconsistent enforcement. Clear timelines ensure feasibility and give small businesses time to comply.
Committee Resolution: The Committee adopted the proposal in part. The format, size and placement of point-of-sale warnings shall be prescribed in regulations, and the Bill shall provide a reasonable transitional period for compliance. The Committee did not adopt the proposal to dilute the warning.

23) The Pubs, Entertainment and Restaurants Association of Kenya (PERAK) submitted as follows:

325. **Under Clause 17, amending Section 20A: Amend** to read as follows: "A person operating a licensed hospitality or entertainment premises shall be required to ensure compliance with age-restriction signage and non-sale to minors within the premises. (2) Enforcement under this section shall be limited to inspection of compliance with visible signage and conduct obligations, and shall not impose licensing requirements on the premises beyond existing county trade licences."
Justification: PERAK explained **that the Bill proposes an over-extension of licensing logic into consumption environments.** Hospitality premises are already licensed under multiple regulatory regimes. Extending licensing obligations creates unnecessary overlap without improving enforcement effectiveness.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures and timelines for issuing licences are a matter for county legislation.

326. **Under Clause 19, amending Section 21A: Amend** to read as follows:
"No requirement for registration under this section shall apply to hospitality or entertainment premises solely by reason of allowing consumption of tobacco products by customers in designated lawful areas."
Justification: PERAK explained that this Clause, **as currently worded, presents a misclassification of roles.** Hospitality operators are not part of the tobacco supply chain. Imposing dealer-style registration obligations creates functional misalignment in enforcement design.
General Recommendations

i. Regarding Inspection and enforcement intensity in the hospitality sector, insert an amendment that:

"Regulatory enforcement in hospitality premises shall be conducted through coordinated inspection frameworks aligned with existing public health, licensing, and safety inspections."

Justification: PERAK explained that this amendment **presents an inspection duplication challenge.** Hospitality businesses already undergo multiple regulatory inspections. Standalone tobacco inspections increase operational disruption without added compliance value.

ii. Regarding Sector-specific compliance clarity, insert an amendment that:

"The Cabinet Secretary shall issue guidelines distinguishing between retail distribution obligations and consumption environment obligations within hospitality premises."

Justification: PERAK explained that:

Role clarity gap: Lack of distinction between retail and consumption environments leads to regulatory overlap and enforcement inconsistency.

iii. Regarding Practical implementation in high-traffic venues, insert an amendment that:

"Enforcement actions within hospitality premises shall prioritise education, signage compliance, and corrective notices prior to punitive measures."

Justification: PERAK explained that:

Operational realism: Hospitality venues operate high-volume customer environments. Enforcement must be practical and incremental to ensure compliance without disrupting business continuity.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

24) The Harm Reduction Society of Kenya, from branches in Laikipia, Tharaka-Nithi and Meru Counties, submitted as follows:

327. The amendment should strengthen the regulation of tobacco products including recognizing right of consumers to use these products based on informed choice as well as protect minors. They are proposing strengthening of regulations rather than a general prohibitive approach. They further submit that full prohibition be subjected to the use of these tobacco products among minors as recognized by the law.

Justification: A prohibitive approach will only benefit illicit trade while undermining both public health and the economic contribution of legitimate enterprises or businesses that trade in the tobacco products. This has been the case for a lot of other industries and examples abound.

Committee Resolution: The Committee noted the submission. The Committee observed that a complete ban of the novel nicotine products is not desirable as it would lead to increase in illicit trade in nicotine products. The Committee resolved to retain a regulation model where electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches.

328. Harm Reduction Society of Kenya notes that WHO Framework Convention on Tobacco Control (FCTC) under Article 1 (d) defines tobacco control as a "range of supply, demand

and harm reduction strategies that aim to improve the health of a population by eliminating or reducing the consumption of tobacco products and exposure to tobacco smokes" They call on the National Assembly, in reviewing the Bill, to include this definition of tobacco control.
Justification: No justification offered
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the WHO Framework Convention on Tobacco Control, having been ratified by Kenya, forms part of the law of Kenya under Article 2(6) of the Constitution, and its definition of "tobacco control" therefore already applies.

329. The Organization is calling upon the National Assembly, in exercising the mandate given under the Constitution and in reviewing the Bill, to follow legal processes as set out in the Constitution of Kenya and the Statutory Instruments Act. Additionally, they call on the National Assembly to consider principles of fairness, research- and consultation-based legislative actions, benchmarking and adequate transition timelines.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the Statutory Instruments Act, Cap. 2A requires that Regulations made under the delegated authority of Parliament be accompanied by a regulatory impact assessment and public consultations. However, a Regulatory Impact Statement is not a requirement for Bills enacted by Parliament.

330. They relatedly note the Bill as published is not accompanied by a Regulatory Impact Statement as required under the Statutory Instruments Act. Noting that the Bill makes proposed changes, both legal and administrative, that would have a significant impact on harm reduction interventions as well as the economy of the country.
Justification: A Regulatory Impact Statement should be made available
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the Statutory Instruments Act, Cap. 2A requires that Regulations made under the delegated authority of Parliament be accompanied by a regulatory impact assessment and public consultations. However, a Regulatory Impact Statement is not a requirement for Bills enacted by Parliament.

331. Harm Reduction Society notes that the Bill proposes to introduce a framework for the approval of all tobacco products by the Cabinet Secretary which as proposed includes submissions of product samples for testing among other requirements, a mandate that already exists under the Standards Act (CAP 296), implemented by the Kenya Bureau of Standard (KEBS)
Justification: Such a proposal, if passed, will result in duplicated approval timelines and a generally onerous administrative process. This portends the risk of significantly and negatively affecting the availability of these products appropriately in Kenya. The proposal is that these processes be removed and existing product regulatory and approval processes undertaken by KEBS be strengthened.

Committee Resolution: The Committee noted the concern and resolved that there is no conflict of laws. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law, and may provide for testing at the request of the Cabinet Secretary.

332. The Society notes that to a very large extent the Bill goes ahead to put technical product requirements into its provisions. This is demonstrated under Section 26 of the Bill – amending Section 53 of the Act (to give powers to the Cabinet Secretary to prescribe such standards) together
with Section 12 of the Bill (Amendment to include new Section 14J (1)(f) to prohibit product flavours). Given the technicalities involved and the fluidity of product specifications with continuous innovations, these aspects may not be sufficiently controlled under the Act, but may be more adequately controlled by product standards. This approach is too prescriptive, technical and ordinarily undertaken through Product Standards by the Kenya Bureau of Standards.
Justification: Proposal that the Bill be amended to leave out such technical specifications to Product Standards as undertaken by the Kenya Bureau of Standards.
Committee Resolution: The Committee did not adopt the proposal. The Committee observed that leaving the volume and nicotine concentration limits for nicotine products and nicotine pouches to be prescribed by the Kenya Bureau of Standards or the National Quality Control Laboratory would create uncertainty for regulators and industry, and resolved that the limits on volume and nicotine concentration be set out in the Act itself, to promote legal certainty and ease of implementation and enforcement.

333. The Society is imploring the National Assembly to consider science which has demonstrated that the use of some of the listed products in tobacco harm reduction interventions contribute to reducing the public health burden associated with tobacco products. Therefore, the proposal is that this amendment and other ongoing reviews culminate in legislation that will enable the availability of tobacco harm reduction interventions.
Justification: This approach will go a long way towards achieving public health goals the Bill's mover intends to achieve, by enabling the consumer to make informed choices as opposed to a one-size-fits-all-approach.
Committee Resolution: The Committee did not adopt the proposal for a separate risk-based regulatory category. The Bill already provides for pre-market approval and testing of each product (sections 14C–14I), in which the risk of a product is assessed, and WHO's position is that e-cigarettes and nicotine pouches are harmful and not safe, particularly for young people.

25) The Retail Trade Association of Kenya (RETRAK), from branches in Laikipia, Tharaka-Nithi and Meru Counties, submitted as follows:

334. **Amend Sections 14C-G** (Product Approval Regime) as the issue imposes strict liability on retailers for stocking unapproved products despite lack of control over approval processes and absence of guaranteed publicly accessible ledger. They propose the insertion of 14G (3): A retailer shall not be guilty of an offence where the retailer demonstrates that at the time of sale, the product-(i) was listed on the approved products register; or, (ii) was not listed on the banned products register and the retailer had no reasonable cause to believe the product had not been approved.
14G (4): A retailer shall be deemed to have acted reasonably if the retailer checked the register not more than 30 days before the date of sale.
Justification: This will align liability with information available, introducing a reasonable steps defence and preventing inadvertent criminal exposure
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the proposed defence, particularly in respect of products not appearing on the banned products list, would permit the sale of unapproved products and undermine the approval regime. The Committee resolved that the Board shall publish and publicize a list of approved and banned products, which enables retailers to verify the status of products before stocking them.

335. **Amend Section 14I** (Register of approved products) where no statutory deadline for publication of approved/banned products register, exposing retailers to liability in a regulatory vacuum. They propose a requirement for the Cabinet Secretary to publish the initial register within six months of commencement.
Justification: This will ensure regulatory clarity before enforcement and will reduce compliance uncertainty.
Committee Resolution: The Committee adopted the proposal in part. The register shall be published in the Gazette and on the website of the Ministry, kept up to date and accessible to licensed operators.

336. **Amend Sections 14C (4) & 14F** (Stock Audit & Recall) that requires immediate stock audits and imposes recall consequences without transitional safeguards exposing retailers to losses. The introduction of a transitional safe harbour permitting continued sale of products lawfully on the market prior to commencement, pending approval decisions.
Justification: This will prevent market disruption and stranded inventory losses
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that a transitional period shall be provided to allow stock lawfully on the market before commencement to be sold or withdrawn but shall not apply to products prohibited under section 14B.

337. **Amend Section 14 F (2)** (Product recall costs) which places financial burden of recalls on retailers, despite lack of control over product approval outcomes. RETRAK says this will

provide for manufacturer/importer liability or cost sharing for recall-related losses at retail level.

Justification: The association says that this will bring about equitable allocation of commercial risk across the value chain.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the proposed new section 14F(2) already places the obligation to withdraw and recall a product on the manufacturer, and that liability for recall costs therefore rests with the manufacturer.

338. **Amend 19A** (Online Sales Prohibition) that introduces a blanket ban on online sales, without distinction between compliant retailers and illicit actors and without age-verification mechanisms. In place, provide that; (a) prohibits sale to persons under 18; 18 (b) requires mandatory verifiable age-verification mechanisms approved by the Cabinet Secretary ; (c) Imposes enhanced penalties for online sales to minors without complying with (b)

Justification: This will prevent market disruption and stranded inventory losses

Committee Resolution: The Committee did not adopt the proposal. Age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online.

339. **Amend Section 19 A** (Market Impact) that risks driving consumers to illicit online markets and disadvantaging compliant retailers. This will permit online sales only through licenced, compliant retailers including controlled delivery and click-and-collect models with ID verification.

Justification: Ensures level playing field, supports access and strengthens enforcement.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

340. **Amend Section 34 A** (Point of Sale Warnings) that creates uncertainty and potential distortion in risk communication with unspecified requirements and no implementation timeline. The Association proposes deletion of Section 34A (1) (a) & (d) and substituted with: (a) A statement that while these products are not risk free, they should not be used by non-smokers or persons under the age of eighteen.

Justification: RETRAK says this will promote accurate, evidence-aligned health messaging without misleading equivalence

Committee Resolution: The Committee adopted the proposal in part. The format, size and placement of point-of-sale warnings shall be prescribed in regulations, and the Bill shall provide a reasonable transitional period for compliance. The Committee did not adopt the proposal to dilute the warning.

341. **Amend Section 34 A** (Implementation framework) as there is no prescribed specifications or transition period, rendering compliance, impractical at commencement. They propose inserted; 34A (2): (a) Cabinet Secretary to publish specifications within 90 days: (b) compliance required only after six months from publication (c) Mandatory review every three years.
Justification: This proposal will provide predictability, implementation time and adaptability to evolving evidence.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the format, size and placement of point-of-sale warnings shall be prescribed in regulations, and the Bill shall provide a reasonable transitional period for compliance.

342. **Amend Section 34 A** (Scope of Application) which applies uniformly to all retailers regardless of scale or exposure; will introduce proportional application or limit to primary tobacco retailers.
Justification: Will promote avoidance of disproportionate compliance burden on general trade outlets
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that that the compliance frameworks are intended to protect public health and must apply uniformly, regardless of the size of the establishment.

26) The Pubs, Entertainment and Restaurants Association of Kenya (PERAK), from branches in Laikipia, Tharaka-Nithi and Meru Counties, submitted as follows:

343. **Amend Section 14J (I)(F)** proposed restrictions on flavours, together with the definition of "characterising flavours" in the Bill.
Justification: PERAK submits that flavours are a significant factor in adult consumer preferences, particularly among adult smokers who may be transitioning from cigarettes to alternative nicotine products. They further say that a total flavour restriction as currently framed does not sufficiently distinguish between traditional combustible tobacco products and alternative nicotine delivery products that may present a different risk profile and different consumer-use dynamics. PERAK respectfully urges the Committee to consider the practical market consequences of an expansive flavour ban. Perak is in particular concerned that such a restriction may primarily prevent lawful traders from meeting adult consumer demand while leaving the demand itself intact-thereby shifting supply illicit channels and exposing consumers to unregulated products. this outcome would undermine both public health and revenue objectives.
PERAK therefore recommends that, instead of total prohibitions, the Committee consider targeted restrictions focused on preventing youth access and youth appeal, while preserving lawful adult choice. PERAK further notes that the existing Tobacco Control Act already contains provisions prohibiting the sale of tobacco products to minors and penalising offenders; the more immediate regulatory value may therefore lie in strengthening enforcement of these existing provisions rather than broadening product prohibitions that are harder to police.

For these reasons, PERAK respectfully urges the Committee to reject or substantially refine the proposals in the new section 14J(1)(f) to avoid unintentionally driving consumers back to combustible cigarettes or into black markets where products are unregulated, untaxed, and potentially more harmful.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

344. **Amend Sections 20A and 21A** (new Sections) on dual licencing and registration requirements. This introduces a duplicating licensing framework requiring all dealers in tobacco products to obtain licences
from respective counties while also obtaining separate registration from the Ministry of Health.

Justification: PERAK is concerned that this approach creates regulatory duplication, contrary to ease-of doing business principles and potentially inconsistence with the policy objectives of regulatory coherence. In practice, parallel licensing and registration regimes for the same commercial activity are likely to increase compliance costs for legally operating traders, create uncertainty and uneven enforcement across counties and agencies, and introduce additional administrative friction for premises that already operate within established county licensing frameworks. PERAK further submits that duplicative regimes risk producing perverse outcomes: they may stifle legitimate retail activity by increasing the cost and complexity of compliance, while simultaneously creating incentives and operating space for black-market traders who do not seek licences at all and are therefore less visible to regulators.

PERAK therefore respectfully proposes that proposed new sections 20A and 21A be deleted from the Bill, and that the Bill avoid imposing parallel regimes regulating the same activity through different authorities. PERAK also urges that existing county licensing frameworks-such as the Unified Business Permit be recognised and respected as the primary point of retail regulation, with any additional public-health-related compliance requirements integrated in a streamlined, non-duplicative manner.

Committee Resolution: The Committee adopted the proposal in part. The Committee noted that trade licensing and public health regulation are county functions under the Fourth Schedule to the Constitution. The Committee did not adopt mutual recognition of licences across counties. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

27) British American Tobacco Kenya PLC (BAT Kenya) submitted as follows:

345. **Clause 2: Amend definitions of "characterising flavour" and "flavour"and Delete definitions relating to harm reduction.**

(i) Amend "*flavour*" as follows—"flavour" means a clearly noticeable smell or taste—

(a) resulting from an additive or a combination of additives; and

(b) that is noticeable before or during use of the product.

(ii) *Amend "characterising flavour"* under section 14J(1)(f) to—

"Prohibited flavours means dessert, candy-like, energy drink, soft drink and alcohol flavours or which are reminiscent of confectionery."

Justification: Seeking to mirror the New Zealand regulatory approach, which is effective in addressing underage uptake while preserving adult access and enforceability. Banning all characterising flavours forces adult vapers into black markets, dangerous home-mixing, or back to smoking.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

346. **Clause 13:** Delete proposed new Section 15(5A).

Justification: The 100-metre radius restriction from places primarily serving persons under 18 years is impractical due to rapid urbanization and commercial growth in Kenya. It operates as an outright ban on point-of-sale retail rather than a regulation.

Committee Resolution: The Committee did not adopt the proposal to delete section 15(5A). Distance restrictions complement, and do not replace, controls on sale to minors, and they reduce the visibility of products near children.

347. **Clause 17 and Clause 19:** Delete proposed Section 20A in its entirety. Amend proposed Section 21A to restrict registration with the Ministry of Health to Manufacturers and Importers only.

Justification: Requiring county-level licensing (Section 20A) duplicates the existing registration framework (Sections 14C–14I) and Single/Unified Business Permits. Extending registration obligations down the entire value chain (distributors, wholesalers, retailers) creates trade harassment, heavy administrative costs and encourages black-market operations.

Committee Resolution: The Committee adopted the proposal in part. County licensing of premises is retained, as trade licensing and public health regulation are county functions under the Fourth Schedule to the Constitution. The Committee did not adopt mutual recognition of licences across counties. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

348. **Clause 18:** Delete proposed Sections 21(2)(a) and 21(2A)(b) on packaging and labelling/plain packaging)

Justification: The Ministry of Health gazetted new packaging requirements in June 2025, which were scheduled for full implementation by mid-March 2026. Imposing sudden increases in Graphic Health Warning sizes (75%) and Cabinet Secretary powers to enforce plain packaging creates significant market instability, burdens legitimate industry and drives non-compliance.

Committee Resolution: The Committee did not adopt the proposal. The 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings

in Clause 23, are retained and apply to electronic nicotine delivery systems and nicotine pouches as provided in the Bill.

349. **Clause 19:** Delete proposed new Section 21B in its entirety on prohibition of single-use plastics.
Justification: Environmental and single-use plastic regulations are already governed under the Sustainable Waste Management (Extended Producer Responsibility) Regulations (2024) made under the Sustainable Waste Management Act and Producer Responsibility Organisations (PROs). Tobacco control legislation should not be conflated with general environmental policy.
Committee Resolution: The Committee did not adopt the proposal to delete section 21B. Disposable nicotine devices and packaging made with single-use plastics pose an environmental and public-health hazard particular to these products. The Committee resolved that implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024.

28) The Kenya Medical Association (KMA) submitted as follows:

350. **Clause 3:** Amend Clause 3 to expand definitions of tobacco and nicotine products covering synthetic nicotine, electronic nicotine delivery systems (ENDS), electronic non-nicotine delivery systems (ENNDS) and nicotine pouches.
Justification: Novel nicotine products are aggressively marketed to children and young adults under the guise of safer alternatives, creating a new generation of nicotine dependence.
Committee Resolution: The Committee noted the support. Clause 12 provides for pre-market approval, testing, flavour restrictions, packaging and the other measures proposed, and the definitions in Clause 3 extend to synthetic nicotine, nicotine pouches and related products.

351. **Clause 5 (proposed Tobacco Control Advisory Committee)** Delete Clause 5 and retain the Tobacco Control Board established under the Act, strengthen the Board and Secretariat and reject any proposal to reclassify the Board into an advisory committee.
Justification: Kenya's tobacco control mandate requires a functional and accountable coordinating authority in line with the WHO Framework Convention on Tobacco Control (FCTC) and this mandate cannot be effectively discharged through an advisory structure.
Committee Resolution: The Committee adopted the proposal. The Committee observed that re-establishing the Tobacco Control Board as a Tobacco Control Advisory Committee would weaken the governance, accountability and enforcement structure established under the Act. The Committee therefore resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

29) The Kenya Paediatric Association (KPA) submitted as follows:

352. **Support the inclusion, in the amendment to section 2 of Cap 245A),** of synthetic formulations intended for use by smoking, inhalation, chewing, buccal placement, oral

absorption, sniffing, vaping or sucking, including cigarette papers, tubes, filters, oral pouches, nicotine delivery devices, and any solutions or liquids intended for use in such devices.
Justification: No separate justification was given.
Committee Resolution: The Committee noted the support for the proposed amendment.

353. **Amend Section 5A of Cap 245A** on the Tobacco Control Advisory Committee (section 5A of the Act) to add a representative of the Kenya Paediatric Association as an additional member.
Justification: KPA submitted this member would provide expert advice on the health effects of tobacco and nicotine products on children and adolescents. This role would complement, not replace, the representation from the Kenya Medical Association.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

354. **Amendments under Section 14A** on vaping products to require manufacturers and importers of vaping products to submit a full ingredients report, including the nicotine content in grams per millilitre, to submit a supplemental ingredients report, and to give formal notice of any change in ingredients or additives, and to require all ingredients to be clearly listed on the product packaging.
Justification: No separate justification was given.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the approval process is a procedural and administrative matter better dealt with in regulations as proposed under clause 26 of the Bill.

355. **Amend Clause 12 (new section 14A)** to require that all electronic nicotine delivery systems and related products be sold in standardised packaging of one prescribed colour, with no imagery, branding or descriptors that may appeal to minors, including fruit, confectionery or beverage images. Only the product name in a prescribed font and the mandated health warnings would be allowed.
Justification: KPA submitted tobacco and nicotine products are increasingly designed and marketed to hide what they are. Some are made to look like everyday items such as chewing gum, mascara, lip gloss, USB devices or watches, and their small size makes them easy to conceal. It added that fruit, candy and sweet flavours make the products attractive and misleading, especially to children and adolescents who may not understand the risks.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

356. **Amend Clause 12 (new section 14A)** to set the maximum nicotine content of a vaping device at 10 mg/ml, to limit any refill vape liquid container to not more than 10 ml at 10 mg/ml, and to back this with higher taxation on products with higher doses of nicotine.
Justification: KPA submitted a dose of 20 mg is extremely high when inhaled and is about the same as smoking 20 cigarettes at once. It argued that such concentrations are highly addictive and greatly raise the risk of nicotine poisoning, whether through accidental or intentional ingestion or inhalation by children and adolescents. It noted that the adolescent brain keeps developing until about 24 years of age, and that nicotine harms attention, working memory and impulse control, which affects learning and school performance.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the nicotine concentration limit provided in the Bill is consistent with international regulatory practice. The Committee further resolved that the proposal on differentiated taxation is a matter for tax legislation, and is outside the scope of the Bill.

357. **Amend Clause 12 (new section 14B** on nicotine pouches) to require manufacturers and importers of nicotine pouch products to submit a full ingredients report, including the total nicotine content in grams, to submit a supplemental ingredients report, and to give notice of any change in ingredients or additives.
Justification: No separate justification was given.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to ban nicotine pouches nicotine pouches while regulating other nicotine products under the proposed Act.

358. **Amend Clause 12 (new section 14B)** to set the maximum nicotine content at 10 mg per pouch, and to back this with higher taxation on products with higher doses of nicotine.
Justification: KPA submitted a dose of 20 mg is extremely high when taken by mouth and is about the same as smoking 20 cigarettes at once. It argued that such concentrations are highly addictive and raise the risk of nicotine poisoning through accidental or intentional ingestion by children and adolescents. It added that pouches placed between the gum and cheek can cause dry mouth, gum soreness, blisters and oral ulcers in young users, whose oral tissues are still developing, and that these lesions may later become precancerous or cancerous.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to ban nicotine pouches nicotine pouches while regulating other nicotine products under the proposed Act.

30) Tropikal Spaces Limited submitted as follows:

359. **Clause 3:**

i. Amend Clause 3 to establish a clear statutory distinction between "Combusted Tobacco Products" (highest risk) and "Smokeless Tobacco or Nicotine-Containing Products" (non-combusted risk-reduction alternatives such as HTPs, vapes, and oral nicotine pouches).

ii. Amend definitions of "smoking" and "tobacco smoke" to cover combusted emissions only, while introducing a distinct definition for "vaping" (inhaling aerosol/vapour generated without combustion).

Justification: Equalizing non-combusted products with combusted cigarettes ignores material risk differences and "force-fits" combustion-based metrics (tar, smoke testing) onto smokeless items, creating legal ambiguity and hindering adult smoking harm reduction.

Committee Resolution: The Committee did not adopt the proposal. The WHO FCTC does not provide for a statutory risk continuum, and the Bill already addresses product risk through the pre-market approval and testing regime in sections 14C–14I, under which each product is assessed individually.

360. **Clause 12 (Pre-Market Approvals and Product Standards - Sections 14C–14I):** Amend Clause 12 to replace the proposed Cabinet Secretary pre-market approval regime with a streamlined product notification model and mandate compliance with technical standards enforced by the Kenya Bureau of Standards (KEBS) pursuant to the Standards Act and require manufacturers to submit documentary evidence/certificates from accredited laboratories demonstrating that product safety, quality and standards is complied with in accordance with the prescribed standards.

Justification: Vesting discretionary pre-market approval powers in the Cabinet Secretary duplicates and displaces KEBS's statutory mandate over standard-setting and conformity assessment, creating administrative lethargy and trade barriers.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

361. **Clause 12 (Additives and Characterising Flavours - Section 14J):** Amend Section 14J(1)(f) to define "characterising flavour" strictly as a clearly noticeable smell or taste other than tobacco, mint, or menthol that is reflected in product packaging, labelling, and marketing materials.

Justification: Broad restrictions without objective criteria create uncertainty and prevent adult consumers from accessing suitable non-combusted alternatives, whereas tobacco, mint, and menthol are standard accepted flavours.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

362. **Clause 18 (Packaging and Health Warnings - Section 21):** Amend to retain the differentiation principle under Section 21 and mandate 75% Graphic Health Warnings specifically for combusted tobacco products, while prescribing a 30% text-only health warning

(e.g., *"This product contains nicotine which is a highly addictive substance"*) for smokeless/non-combusted products.

Justification: Combustion-focused graphic warnings misrepresent health risks when applied to smokeless products, misleading adult smokers seeking lower-risk alternatives.

Committee Resolution: The Committee did not adopt the proposal. The 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, are retained and apply to electronic nicotine delivery systems and nicotine pouches as provided in the Bill.

363. **Clause 20 (Advertising and Point-of-Sale Communication - Section 25):** Amend Section 25 to permit factual, direct, and non-promotional information regarding product availability, characteristics, price and brand at the point of sale (POS) for adult consumers.

Justification: Adult smokers require accurate point-of-sale information to understand safer non-combusted alternatives and make informed switching decisions.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that Article 13 of the WHO Framework Convention on Tobacco Control, which forms part of the law of Kenya under Article 2(6) of the Constitution, requires a comprehensive ban on tobacco advertising, promotion and sponsorship, including at points of sale.

364. **Clause 10 (Section 12 on Tax and Price Policies):** Amend Clause 10 to:

(a) Exclude raw/unprocessed tobacco from excise taxation;
(b) Establish risk-proportionate differential excise duty rates (substantially lower excise for smokeless products relative to combusted cigarettes);
(c) Delete proposed prohibitions on tax-free sales and duty-free zone operations; and
(d) Reject statutory earmarking of excise tax revenues for non-communicable disease funds in favour of general treasury allocation.

Justification: Taxing unprocessed tobacco burdens primary farmers rather than end consumers. Differential tax rates incentivize switching from combustible cigarettes to lower-risk alternatives. Outright duty-free bans violate the EAC Customs Management Act and harm aviation retail without reducing illicit trade. Earmarking rigidifies fiscal management according to IMF/OECD standards.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that that excise duty rates, including on unprocessed tobacco and differentiated rates, are matters for tax legislation and outside the scope of the Bill. The Committee further noted that the prohibition of tax-free and duty-free sales gives effect to Article 6(2)(b) of the WHO Framework Convention on Tobacco Control.

31) Dentons Hamilton Harrison and Mathews Advocates submitted as follows:

365. **Clause 3:** Amend Clause 3 to exclude Nicotine Replacement Therapy (NRT) products (regulated under the Pharmacy and Poisons Act) and medical devices (nebulizers, inhalers) from the expanded definitions of tobacco products and ENDS.

Justification: Prevents double regulation of essential medicines and medical devices, avoiding regulatory overlap and non-compliance risks for healthcare providers.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

366. **Clause 12 (Pre-Market Approvals & Statutory Timelines):** Delete proposed Sections 14C–14I and replace with KEBS/KRA certification, and insert statutory processing timelines.
Justification: Uncontrolled timelines for approval create trade barriers. Additionally, KEBS and KRA already possess statutory standard-setting and excise licensing powers under existing law.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

367. **Clause 13:** Amend Clause 13 by deleting the new proposed section 5A on the ban of selling tobacco products within a radius of one hundred metres from any place primarily serving persons under the age of eighteen years.
Justification: The use of the phrase "any place" is vague and ambiguous, creating uncertainty and making compliance difficult. This would be interpreted to include schools, shopping malls, parks, recreational facilities and residential areas, resulting in uncertainty for businesses.
Committee Resolution: The Committee did not adopt the proposal to delete section 15(5A). Distance restrictions complement, and do not replace, controls on sale to minors, and they reduce the visibility of products near children.

368. **Clause 14 on packaging requirements:** Amend Clause 14 to include transitional provisions of nine months from the date of coming into force of this section.
Justification: To provide for a clear transition period to allow compliance by businesses and avoid disruptions.
Committee Resolution: The Committee adopted the proposal in part. The 75% front-and-back health warning in Clause 18 is retained. The Committee resolved that a transitional period shall be provided to allow stock lawfully on the market before commencement to be sold or withdrawn.

369. **Clause 16 (Online Sales Regulations):** Amend Section 19A to permit e-commerce/online sales subject to mandatory age verification systems and B2B exemptions.
Justification: Absolute bans harm digital commerce, violate constitutional proportionality, and disrupt B2B wholesale distribution.

Committee Resolution: The Committee did not adopt the proposal. Age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online.

370. **Clause 19:** Delete proposed new Section 21B in its entirety on prohibition of single-use plastics.

Justification: Environmental and single-use plastic regulations are already governed under the Environmental Management and Co-ordination Act, the Sustainable Waste Management which imposes extended producer responsibility as well as the Extended Producer Responsibility Regulations (2024) made under the Sustainable Waste Management Act and Producer Responsibility Organisations (PROs). Tobacco control legislation should not be conflated with general environmental policy.

Committee Resolution: The Committee did not adopt the proposal to delete section 21B. Disposable nicotine devices and packaging made with single-use plastics pose an environmental and public-health hazard particular to these products. The Committee resolved that implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024.

32) Dave Siganga, Advocate submitted as follows:

371. **The proposed provisions 14C, 14D, 14E, 14F, 14G, 14H and 14I should be deleted and replaced with the following section 14C:**

14C (1) A person shall not manufacture or import a tobacco product for supply in Kenya unless such product has been certified by the Kenya Bureau of Standards in accordance with the Standards Act and licenced under the Excise Duty Act by the Commissioner General of the Kenya Revenue Authority (2) Subsection (1) shall apply to—

(a) any new tobacco product; and

(b) any tobacco product that has undergone a substantial modification

In this section, substantial modification means any changes to a product that deviates from previously declared parameters under the relevant product standard.

(3) An application for certification under this section shall be submitted to the Kenya Bureau of Standards in accordance with the Standards Act and an application for licensing under this section shall be submitted to the Commissioner General of the Kenya Revenue Authority in accordance with the Excise Duty Act.

(4) A tobacco product that was lawfully manufactured, imported or supplied in Kenya as of the date this section comes into force shall be deemed to satisfy the requirements of subsection (1) and may continue to be manufactured, imported or supplied unless it is subsequently substantially modified or required under the Standards Act and Excise Duty Act to undergo fresh approval.

Justification: The Bill seeks to grant the Cabinet Secretary broad powers to approve tobacco products and persons dealing in tobacco products, despite the existence of regulatory frameworks under other laws that already govern tobacco products and the licensing of manufacturers and importers of tobacco products.

The Standards Act (Cap. 496 of the Laws of Kenya) and the Excise Duty Act (Cap. 472 of the Laws of Kenya) already establish mechanisms for the certification of tobacco products and the licensing of manufacturers/importers of tobacco products, respectively, as set out below:

Standards Act

Under the Standards Act, all products sold in Kenya must conform to the standards issued by the Kenya Bureau of Standards (KEBS), which is established under the Standards Act.

Sections 10 and 12 of the Standards Act establish a comprehensive regulatory framework administered by KEBS, including product testing, conformity assessment, and the issuance of standardisation permits.

The regulation of tobacco products is embedded within this framework. For example, the maximum permitted levels of nicotine, tar and carbon monoxide in tobacco products are prescribed by KEBS under Kenya Standard KS EAS 110:2022, which was adopted pursuant to the Standards Act.

The Kenya Standard sets out the following requirements:

1. It prohibits cigarettes from containing heavy metal contaminants in excess of the limits set out below when tested with the test methods in the Standard:

a. Arsenic (As) mg/kg maximum limit is 0.5 (test method AOAC 952.13);
b. Cadmium (Cd) mg/kg maximum limit is 1 (test method ISO 6561-1);
c. Chromium (Cr) mg/kg maximum limit is 1 (test method ISO 9174); and
d. Lead (Pb) mg/kg maximum limit is 1 (test method ISO 12193).

2. Width of tobacco strands in millimeters (mm) is between 0.1 to 1.5.
3. Nicotine content, % by mass (on dry basis), the maximum limit is 2.5.
4. Moisture content, % by mass (loss on heating) is between 10.0 to 16.0.
5. Total ash, % by mass (on dry basis), the maximum limit is 25.0.
6. Acid insoluble ash, % by mass (on dry basis), the maximum limit is 3.0.
7. Potash (as K2O), % weight (on dry basis), the maximum limit is 10.0.
8. Sulfur (as sulfate), % by weight, the maximum limit is 3.5.
9. Filling density of tobacco blend, g/cm3, the minimum limit is 0.15.
10. Carbon monoxide per cigarette in mg, the maximum limit is 18.
11. Nicotine in smoke per cigarette in mg, the maximum limit is 1.5.
12. Tar yields per cigarette in mg, the maximum limit is 18.

The Kenya Standard specification for cigarettes was published and effected by the Standards Order, Legal Notice No. 122 of 2002.

Further, to ensure alignment with regional regulations, Section 15 of the East African Community Standardization, Quality Assurance, Metrology and Testing Act, 2006 (EAC Standards Act) requires East African States to adopt East African Standards as their national standards and withdraw any existing national standards with a similar purpose and scope.

The East African Standard (110:2022) was issued by the East African Standards Committee under the EAC Standards Act and applies in Kenya under Section 7 of the EAC Standards Act, which mandates the national quality assurance body to implement the decisions and recommendations of the East African Standards Committee regarding East African Standards.

In compliance with this regional mandate, Kenya has adopted the 2022 East African Standard (EA 110:2022) on Cigarette Specifications as the official Kenya Standard.

The implementation of these standards falls within KEBS' statutory mandate and provides an established framework for regulating the composition and quality of tobacco products.

Further, KEBS has demonstrated its ongoing oversight of the sector through the publication of the Draft Kenya Standard for Smokeless Tobacco Products (KS 2976:2023), which sets out specifications for smokeless tobacco products such as nicotine pouches intended for human consumption. This underscores that tobacco products, including emerging product categories, are already subject to technical regulation under the Standards Act through KEBS.

KEBS is therefore the institution statutorily mandated and technically equipped to evaluate products, conduct laboratory testing, assess conformity with applicable standards and issue permits where manufacturers demonstrate compliance.

Further, the application requirements under section 14D are fundamentally technical in nature and require the submission of detailed product information and samples for analysis. This aligns directly with KEBS' statutory mandate under section 4 of the Standards Act, which includes:

1. examining and testing commodities;
2. ensuring standardisation and quality control;
3. certifying products for compliance with Kenyan Standards.

The Ministry of Health lacks the laboratory infrastructure, specialized toxicologists, and technical conformity personnel that KEBS possesses.

Further, given that approval is substantively dependent on technical evaluation already conducted by KEBS and that the existing framework already regulates manufacturers and importers of tobacco products, vesting final approval authority in the Cabinet Secretary renders the provision redundant and duplicative.

Excise Duty Act

Section 15 of the Excise Duty Act requires manufacturers and importers of excisable goods, including tobacco products, to be licensed or registered with the Commissioner General of the Kenya Revenue Authority before undertaking such activities.

The application for a licence is made in a prescribed form upon payment of the prescribed fee. Upon receipt of the application, the Commissioner General may grant or refuse to issue the applicant with a licence.

In light of the above existing framework, the introduction of an additional approval process requiring prior authorisation from the Cabinet Secretary creates a parallel regulatory layer. This will lengthen and complicate the regulatory approval process and introduce uncertainty for manufacturers and importers. These provisions should be deleted.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

372. **Delete Section 15(5A).**

Justification: This provision prohibits the sale of tobacco products within a radius of one hundred metres of any place primarily serving persons under the age of eighteen years.

The use of the phrase "any place primarily serving persons under the age of eighteen years" is vague and ambiguous, creating uncertainty and making compliance difficult. The proposed amendment does not define what constitutes a place primarily serving persons under the age of eighteen year. This may be interpreted broadly to include schools, places of worship, hospitals, shopping malls, parks, recreational facilities, and residential areas, resulting in uncertainty for businesses.

The proposed one hundred metre radius restriction is also impractical, particularly in urban areas where retail outlets, supermarkets, shopping centres, petrol stations, and other businesses lawfully selling tobacco products are often located in close proximity to places frequented by persons under the age of eighteen years.

This concern is reinforced by the challenges experienced in implementing a 300-metre proximity requirement under the Alcoholic Drinks Control Act. In many instances, premises were established lawfully before the construction of schools, places of worship, residential developments and other public facilities. As a result, compliance has become difficult for businesses dealing in alcoholic drinks and has created regulatory uncertainty. A similar restriction in the present context with respect to tobacco products will therefore be difficult to enforce and will unfairly affect businesses that were lawfully established before the surrounding infrastructure was developed.

Further, the proposal will unjustifiably limit the right to property protected under Article 40 of the Constitution by adversely affecting businesses that have already invested in infrastructure, leases, and retail outlets.

The Act already contains safeguards aimed at preventing access to tobacco products by persons under the age of eighteen years, including restrictions on sales to minors, age verification requirements and mandatory signage at points of sale. These should adequately avert the sale of tobacco products to persons under the age of eighteen years. In this regard, this provision should be deleted.

Committee Resolution: The Committee did not adopt the proposal to delete section 15(5A). The Committee resolved that the distance restrictions complement, and do not replace controls on sale to minors, and they reduce the visibility of products near children.

373. **Amend Section 16** to include the following transitional clause: "This provision shall come into effect nine (9) months from the date of coming into force of this section."

Justification: This provision seeks to revise the prescribed specifications applicable to retailers in respect of display warnings under the Act by amending the requirements on the size and colour of the text of display warnings as well as the applicable penalties for non-compliance. The proposed amendments do not provide for a clear transition period to enable the millions of affected retailers to adjust their in-store displays and signage to meet the new requirements. This omission creates uncertainty and practical compliance challenges

and is inconsistent with the principle of legal certainty, which requires that regulatory obligations be clear, predictable and capable of implementation. Further, principles of administrative fairness and proportionality require that regulated entities, including retailers, be afforded adequate time to comply with revised requirements, especially where such changes necessitate modification or replacement of existing signage and point-of-sale materials. This provision should be amended to include a transition clause to afford time to retailers to comply with this provision.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to provide a reasonable transitional period within which persons dealing in nicotine products shall comply with the Act and the regulations, while noting that section 53 of the Act already empowers the Cabinet Secretary to make regulations prescribing health messages and display warnings to be displayed on every package containing tobacco and nicotine products.

374. **Amend Section 19A** to read as follows: A person shall not sell or offer for sale tobacco products including nicotine pouches and electronic nicotine delivery systems, through an online platform or any form of e-commerce except where such sale or offer for sale complies with the following conditions:

i. implementation of mandatory age-verification systems
ii. prohibition of retail sales to persons below the age of eighteen years; and
iii. compliance with requirements under the Act.

Justification: This provision seeks to prohibit the sale or offering for sale of tobacco products including nicotine pouches and electronic delivery systems through an online platform or any form of e-commerce. The proposed absolute prohibition is disproportionate and commercially impracticable. As currently framed, it fails to distinguish between business-to-business (B2B) transactions and retail sales, thereby capturing legitimate, licensed supply chain activities and rendering lawful distribution models unworkable. This results in an overbroad restriction that unduly interferes with the operation of lawful commerce. Further, the objective of preventing access to tobacco products by minors can be effectively achieved through less restrictive measures, including robust age-verification mechanisms. Such safeguards are already contemplated under the Act and are widely implemented in comparable jurisdictions such as the EU and the UK, demonstrating that the policy objective can be achieved without resorting to a blanket prohibition. The provision also raises constitutional concerns under Articles 24 and 40 of the Constitution, as it imposes a limitation on economic activity that is neither reasonable nor proportionate in an open and democratic society. In addition, by targeting online sales exclusively, it will amount to unjustified discrimination against digital commerce, contrary to Article 27 of the Constitution.

Finally, the prohibition is difficult to enforce in practice, given the prevalence of circumvention tools such as VPNs and cross-border platforms. This undermines the effectiveness of the measure and weakens its rational connection to the intended regulatory objective.

To resolve this, this provision should be amended to permit online sales subject to conditions including mandatory age-verification systems, prohibition of retail sales to persons below 18 and compliance with requirements under the Act.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online.

375. **Delete Section 20A.**

Justification: The Bill, as currently drafted, introduces licensing and approval requirements at the national level in respect of tobacco products and persons dealing in such products. This provision in addition seeks to introduce a separate licensing framework at the county level, thereby establishing a dual licensing regime across both levels of government.

In particular, the Bill empowers county governments to license persons engaged in the manufacture, distribution, storage, sale, or other dealings in tobacco products.

While the marginal note suggests that the licensing requirement is limited to premises, the substantive wording is sufficiently broad to be interpreted as extending to the licensing of persons and activities, rather than merely regulating business locations. This creates ambiguity and raises significant concerns regarding the scope of county government powers.

Under the Fourth Schedule to the Constitution of Kenya, 2010, county governments are mandated to regulate "trade development and regulation," including the licensing of businesses operating within the county, such as shops and other commercial establishments.

County governments discharge this function through their trade licensing frameworks, which require businesses operating within their jurisdictions to obtain single business permits or trade licences authorising the conduct of commercial activities within the relevant county.

However, this mandate does not extend to the establishment of sector-specific or product-specific licensing regimes, particularly in areas such as tobacco control, which involve broader considerations of public health policy, product standards, and supply chain regulation, and are therefore predominantly within the purview of the national government.

Therefore, by purporting to license the manufacture, distribution, and storage of tobacco products, the provision appears to go beyond the counties' remit of regulating trade within their jurisdictions and encroaches into areas that are regulated at the national level.

This risks the establishment of a parallel and potentially conflicting regulatory framework, which may give rise to legal uncertainty and administrative inefficiencies. Further, there is a potential risk for inconsistent licensing regimes across counties, which will undermine regulatory certainty and negatively impact the ease of doing business, particularly for entities operating across multiple jurisdictions.

This additional county-level licensing requirements will also create opportunities for trader harassment and arbitrary enforcement, potentially discouraging retailers and wholesalers from dealing in tobacco products altogether. Such outcomes could inadvertently drive legitimate products out of formal distribution channels and create opportunities for illicit trade, as unregulated and black-market operators fill the resulting gap in the market.

This provision should be deleted so as to limit the powers of county governments to their existing role of licensing businesses through trade licences, while reserving product approval and sector-specific regulation to the national government. This approach is also consistent

with comparative practice, such as in the United Kingdom, where local authorities primarily license retail premises, rather than establishing parallel product-specific licensing regimes.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

376. **Delete Section 21B.**

Justification: This provision seeks to prohibit the manufacture, sale, distribution or importation of a tobacco product, its packaging or a disposable electronic delivery system that uses single use plastics.

The term 'single-use plastics' is not defined either in this Bill or the Tobacco Control Act. This omission creates uncertainty as to the scope of the prohibition and the conduct captured by the offence.

In light of Articles 24 and 50(2)(b) of the Constitution, which require that limitations of rights and criminal offences be clearly and precisely defined, the absence of a definition renders the provision uncertain and therefore in contravention of the constitution.

Further, the Bill proposes a blanket prohibition on the use of single-use plastics in relation to tobacco products, thereby imposing a higher and more restrictive standard than that currently provided under Kenya's environmental legislative framework.

Under the Environmental Management and Coordination Act and its subsidiary regulations, the use of plastics is permitted subject to approval by the National Environment Management Authority (NEMA). The proposed provision under the Bill departs from this framework by introducing an absolute ban, which creates inconsistency with existing environmental laws.

Further, the Sustainable Waste Management Act imposes extended producer responsibility (EPR) obligations on producers to mitigate the environmental impact of products and associated waste. The applicable EPR Regulations require, inter alia, registration with NEMA prior to the importation of goods, packaging, or products into Kenya, and impose ongoing compliance obligations aimed at reducing pollution.

Plastic pollution is material neutral. It should not matter whether the plastic originates from tobacco packaging, food packaging, pharmaceutical packaging or beverage bottles. Environmental legislation regulates the material (in this case plastic), whereas the Tobacco Control Act regulates the product (tobacco). By regulating plastic packaging through a tobacco statute, Parliament risks creating inconsistent environmental standards across different sectors. A more coherent legislative approach would be to regulate all single-use plastics through the environmental framework while allowing sector-specific legislation, such as the Tobacco Control Act, to impose additional health-related requirements where justified.

The introduction of a sector-specific plastics regime under the Tobacco Control Act is unnecessary, as it duplicates existing obligations and undermines a harmonised, material-based approach to environmental regulation. In this regard, this provision should be deleted.

Committee Resolution: The Committee did not adopt the proposal to delete section 21B. Disposable nicotine devices and packaging made with single-use plastics pose an environmental and public-health hazard particular to these products. The Committee resolved that implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024.

377. **Section 21(5)** should be amended to read as follows: "Every package containing a tobacco product shall bear such statement as to the tar, nicotine and other constituents as may be prescribed and such statement shall be placed directly on the right-hand side of the package, underneath the cellophane or other clear wrapping in a conspicuous and prominent format and shall be limited to the disclosure of the contents and not their quantities."

Justification: This provision of the Tobacco Control Act requires tobacco product packaging to disclose tar, nicotine and other constituents, while prohibiting the disclosure of the quantities of those constituents. We propose that this restriction be deleted.

As a member of the East African Community, Kenya is bound to comply and adopt East African Standards as their national standards. In this regard, the Kenya Bureau of Standards (KEBS) has started implementing the East African Community Standard on Nicotine Pouches - Specifications, EAS 1198:2025, hereinafter referred to as the "EAC Standard".

The EAC Standard requires, under paragraph 8 on labelling, that retail packaging disclose, among other information, the ingredients contained in the product and the nicotine content expressed as a percentage (%). Compliance with the EAC standard therefore requires disclosure of constituent quantities, whereas section 21(5) of the Tobacco Control Act prohibits such disclosure.

This inconsistency has already created practical implementation challenges. KEBS requires disclosure of nicotine content percentages on packaging before issuing its relevant marks while the Ministry of Health continues to apply the packaging requirements under the Tobacco Control Act, which prohibit disclosure of constituent quantities. This places manufacturers, importers and distributors in a difficult position of being subject to conflicting regulatory requirements issued by different government authorities.

The restriction also undermines the harmonisation objectives of the East African Community by creating divergence between national legislation and regionally adopted standards. Such inconsistencies increase compliance costs, create regulatory uncertainty and impede the effective implementation of product standards.

In addition, the restriction limits consumers' access to material product information such as the concentration or quantity of constituents such as nicotine.

Article 46(1) of the Constitution provides that consumers have the right to goods and services of reasonable quality, to the information necessary for them to gain full benefit from goods and services, to the protection of their right, safety, and economic interests, and to compensation for loss or injury arising from defects in goods and services.

The importance of consumer access to product information has been recognised by the courts. In Nairobi Bottlers Ltd v Ndung'u & Another (Civil Appeal 99 of 2018) [2023] KECA 839 (KLR), the Court of Appeal held that Article 46 of the Constitution and the Consumer

Protection Act requires consumers to be provided with relevant product information, including information relating to ingredients, nutritional content and potential health implications. Such information enables consumers to make informed decisions regarding the products they consume.

Accordingly, consumers are entitled to receive accurate and meaningful information about the products they purchase, particularly where such information relates to product composition and enables informed decision-making. Prohibiting the disclosure of constituent quantities is inconsistent with this objective and unnecessarily restricts the provision of factual, non-promotional information to consumers. In this regard, the restriction should be deleted.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to retain the restriction in section 21(5) of the Act for cigarettes and other combustible tobacco products. For electronic nicotine delivery systems and refill containers, the Committee resolved to insert a provision requiring the package to state the nicotine content, in the form prescribed by the Cabinet Secretary in regulations.

378. **Amend Section 19(1)** to read as follows: "No person shall sell a tobacco product by means of a display that permits a person to handle the tobacco product before paying for it. For purposes of this subsection, a display of tobacco products that remains under the control of the person selling the tobacco product and does not permit access to or handling by a person buying the tobacco product shall not contravene this subsection."

Justification: This provision is intended to prohibit self-service displays that allow consumers to access and handle tobacco products prior to purchase. However, its implementation has resulted in differing interpretations, creating uncertainty among retailers and enforcement agencies.

In practice, retailers have been subjected to harassment on the basis that tobacco products are visible to the public or are displayed behind a counter, notwithstanding that customers cannot access or handle the products prior to payment. This interpretation extends the provision beyond its plain wording and effectively treats section 19 as a requirement for products to be hidden from view or stored in locked cabinets, despite the Tobacco Control Act containing no such express requirement.

The current wording focuses on whether a display permits a person to handle a tobacco product before paying for it, rather than whether the product is visible to the consumer. The misinterpretation of this provision has created unnecessary compliance burdens and inconsistent enforcement across the retail sector. Retailers who take reasonable measures to ensure that tobacco products remain under the control of sales personnel should not be penalised merely because the products are visible within a controlled retail environment.

Further, the principle of legal certainty requires that regulatory obligations be clear, predictable and capable of implementation. Where a statutory provision is capable of being interpreted inconsistently by regulators, retailers and enforcement officers, it should be clarified to ensure predictable and uniform application. Failure to do so exposes retailers to arbitrary enforcement and undermines confidence in the regulatory framework.

The provision should therefore be amended to expressly clarify that its purpose is to prohibit self-service access rather than the mere visibility of tobacco products.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that section 19(1) already prohibits only displays that permit a buyer to handle a tobacco product before paying for it.

379. **Section 30** should be amended to insert the following new section immediately after section 30(1): Section 30(1A): "Section 30(1) shall not apply to business-to-business communications, negotiations, transactions, pricing arrangements, trade incentives or other commercial agreements between manufacturers, distributors, wholesalers and retailers undertaken in the ordinary course of business."

Justification: This provision seeks to prohibit promotional incentives that encourage the purchase or consumption of tobacco products by consumers. While this objective is legitimate, the provision is drafted too broadly and captures ordinary business-to-business (B2B) commercial arrangements that are not directed at consumers.

As currently framed, the provision does not distinguish between consumer facing promotions and legitimate commercial arrangements between manufacturers, distributors, wholesalers and retailers. Common practices such as trade discounts, volume rebates, wholesale pricing arrangements and distribution incentives could be interpreted as prohibited inducements despite serving only a commercial supply-chain function.

This creates legal uncertainty as unlike consumer promotions, B2B arrangements do not influence consumer purchasing decisions but facilitate the efficient production and distribution of products.

The absence of an express exclusion for legitimate B2B arrangements may therefore result in inconsistent enforcement and interference with lawful commercial operations. The provision should be narrowed to target consumer-facing promotions and inducements while excluding bona fide commercial arrangements between businesses operating within the tobacco supply chain. This approach is also consistent with comparative practice, such as in Nigeria, where commercial arrangements and communications are excluded from a statute's application.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that ordinary commercial dealings within the supply chain are not directed at consumers and are not intended to be restricted under section 30(1).

33) Okwach and Company Advocates submitted a memorandum (Ref. NA/DDC/DC-H/2026/89) as follows:

380. **Clause 3(h), definition of "tobacco product":** Amend the definition to read:

"tobacco product" means any product whether composed in whole or in part of:

1) *tobacco, including tobacco leaves and any extract thereof, intended for use by smoking, inhalation, chewing, sniffing or sucking, and includes cigarette papers, tubes and filters,*
2) *nicotine but does not contain tobacco, irrespective of whether the nicotine is tobacco-derived, synthetic, biosynthetic or produced by any other manufacturing process, but excluding products regulated as a medicinal product under any written law, or*

3) *nicotine analogues or a chemical substance that is structurally similar to nicotine, but excluding products regulated as a medicinal product under any written law.*

Justification: The firm stated that the phrase "nicotine from any source" could capture trace nicotine that occurs naturally in tomatoes, potatoes and eggplants, and bring agricultural and food products under tobacco control enforcement. The reference to "nicotine analogues" could capture analogues developed for medicinal and therapeutic use. The definition would bring nicotine replacement therapy (NRT) products, such as patches, gums, lozenges and inhalers, under the Act. The Kenya Essential Medicines List 2023 lists NRT gum and patches as essential medicines, and the Pharmacy and Poisons Act (Cap. 244) regulates them. Dual regulation would create overlap, uncertainty and extra compliance obligations for manufacturers, importers, distributors and healthcare providers.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

381. **Clause 3(i), definition of "electronic nicotine delivery system":** Amend the definition so that it applies only where the substance contains nicotine. The definition should include electronic cigarettes, electronic cigars, electronic cigarillos, electronic hookahs, vape pens, vape pods and similar devices of any shape, size or appearance, and exclude any similar device and its accessories, components or parts designed, manufactured or capable of use for medical purposes.

Justification: The firm stated that the definition covers devices that contain no nicotine, including nebulisers, asthma inhalers and metered-dose inhalers. The phrase "capable of being used to aerosolize, vaporize, or otherwise convert a substance into an inhalable form" captures standard medical respiratory equipment. The definition would place medical importers, pharmacies and respiratory patients in immediate non-compliance, although the Pharmacy and Poisons Act already regulates these products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to regulate the use of electronic nicotine delivery systems and exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

382. **Clause 12, proposed sections 14C to 14I:** Delete the proposed sections and substitute a new section 14C with the following effect:

1) a person shall not manufacture or import a tobacco product for supply in Kenya unless KEBS has certified the product under the Standards Act and the Commissioner General of KRA has licensed it under the Excise Duty Act,
2) the requirement applies to any new tobacco product and to any tobacco product that has undergone substantial modification, meaning changes that deviate from the declared parameters under the relevant product standard,

3) applications for certification go to KEBS under the Standards Act and applications for licensing go to the Commissioner General under the Excise Duty Act, and
4) a tobacco product lawfully on the market at commencement shall be deemed to comply and may remain on the market unless it undergoes substantial modification, in which case it requires fresh approval under the Standards Act and the Excise Duty Act.

Justification: The firm stated that the Standards Act (Cap. 496) and the Excise Duty Act (Cap. 472) already provide for certification of tobacco products and licensing of manufacturers and importers. Under sections 10 and 12 of the Standards Act, KEBS tests products, assesses conformity and issues permits. Kenya Standard KS EAS 110:2022 sets limits for cigarettes, including arsenic at 0.5 mg/kg, cadmium, chromium and lead at 1 mg/kg each, nicotine in smoke at 1.5 mg, and tar and carbon monoxide at 18 mg per cigarette. Section 15 of the East African Community Standardization, Quality Assurance, Metrology and Testing Act, 2006 requires Partner States to adopt East African Standards. KEBS has also published Draft KS 2976:2023 on smokeless tobacco products, including nicotine pouches. The firm submitted that the Ministry of Health lacks the laboratories, toxicologists and conformity personnel that KEBS holds. Section 15 of the Excise Duty Act requires manufacturers and importers of excisable goods to hold a licence from the Commissioner General. A further approval layer under the Cabinet Secretary would duplicate these systems, lengthen approvals and create uncertainty for manufacturers and importers.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

383. **Clause 13, proposed section 15(5A):** Delete the provision.

Justification: The phrase "any place primarily serving persons under the age of eighteen years" is vague. The Bill does not define it, and it could extend to schools, places of worship, hospitals, shopping malls, parks, recreational facilities and residential areas. Supermarkets, shopping centres, petrol stations and other lawful outlets in urban areas often lie close to such places. The firm cited difficulties in enforcing the 300-metre rule under the Alcoholic Drinks Control Act, where many premises existed before schools, places of worship and residential developments. The restriction would unfairly affect businesses established before the surrounding infrastructure and limit the right to property under Article 40 of the Constitution. The Act already restricts sales to minors through age verification and mandatory signage at points of sale.

Committee Resolution: The Committee did not adopt the proposal to delete section 15(5A). The Committee resolved that distance restrictions complement, and do not replace, controls on sale to minors, and they reduce the visibility of products near children.

384. **Clause 16, proposed section 19A:** Amend the provision to permit online sale of tobacco products, nicotine pouches and electronic nicotine delivery systems where the seller:

1) implements mandatory age-verification systems,
2) does not sell to persons below the age of eighteen years, and
3) complies with the requirements of the Act.

Justification: The firm submitted that the absolute ban, with a penalty of up to Kshs. 500,000 or three years' imprisonment, is disproportionate. It fails to distinguish business-to-business transactions from retail sales and makes lawful distribution models unworkable. The EU and the United Kingdom prevent access by minors through age verification. The firm argued that the ban limits economic activity in a manner that fails the test under Article 24 and discriminates against digital commerce contrary to Article 27. VPNs and cross-border platforms make the ban difficult to enforce.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online.

385. **Clause 17, proposed section 20A:** Delete the provision.

Justification: The provision requires any person who manufactures, distributes, stores or sells tobacco products to hold a licence from the county executive committee member, with a penalty of up to Kshs. 100,000 or imprisonment for 12 months. Together with national licensing and approval, it creates a dual licensing regime. The Fourth Schedule to the Constitution mandates counties to regulate trade through general business permits. It does not extend to sector-specific licensing in areas such as tobacco control, which involve public health policy, product standards and supply chain regulation at the national level. Inconsistent county regimes would raise costs, invite harassment of traders, discourage lawful retailers and create room for illicit trade. The firm cited the United Kingdom, where local authorities license premises only.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation.

386. **New clause, section 21(5) of the principal Act:** Amend section 21(5) by deleting the words "and shall be limited to the disclosure of the contents and not their quantities".

Justification: Section 21(5) requires packaging to state tar, nicotine and other constituents but bars disclosure of their quantities. Paragraph 8 of the East African Standard EAS 1198:2025 on nicotine pouches, which KEBS has begun to implement, requires packaging to disclose the nicotine content as a percentage. Manufacturers and importers therefore face conflicting requirements from KEBS and the Ministry of Health. The restriction also denies consumers material information. The firm cited Article 46(1) of the Constitution and the Court of Appeal decision in Nairobi Bottlers Ltd v Ndung'u and Another [2023] KECA 839 (KLR) on consumer access to product information.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to retain the restriction in section 21(5) of the Act for cigarettes and other combustible tobacco products. For electronic nicotine delivery systems and refill containers, the Committee resolved to insert a provision requiring the package to state the nicotine content, in the form prescribed by the Cabinet Secretary in regulations.

387. **New clause, section 19(1) of the principal Act:** Amend section 19(1) to provide that a display of tobacco products that remains under the control of the seller, and does not allow a buyer to access or handle the product before payment, does not contravene the subsection.
Justification: Enforcement officers have harassed retailers whose products are visible behind counters, even where customers cannot handle them before payment. This reading treats section 19 as a requirement to hide products in locked cabinets, which the Act does not state. The amendment would confirm that the provision targets self-service access and not the visibility of products.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that section 19(1) already prohibits only displays that permit a buyer to handle a tobacco product before paying for it.

388. **New clause, section 30 of the principal Act:** Insert a new subsection (1A) providing that section 30(1) does not apply to business-to-business communications, negotiations, transactions, pricing arrangements, trade incentives or other commercial agreements between manufacturers, distributors, wholesalers and retailers in the ordinary course of business.
Justification: Section 30 seeks to prohibit promotional incentives aimed at consumers, yet its wording captures ordinary trade practices such as trade discounts, volume rebates, wholesale pricing and distribution arrangements. These arrangements do not influence consumer choices. The firm cited Nigeria, which excludes commercial arrangements and communications from similar provisions.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that ordinary commercial dealings within the supply chain are not directed at consumers and are not intended to be restricted under section 30(1).

34) Dr. Duncan Okubasu, PhD, submitted as follows:

389. The Bill raises a constitutional difficulty in placing combustible tobacco, heated products, ENDS, nicotine pouches and other non-combustible products within one broad regulatory category. He submitted that these products are materially different in their characteristics and risk profiles, and subjecting them to identical legal treatment without an adequate justification may be a problem.
He stated the combustible cigarettes involve the burning of tobacco and the inhalation of smoke containing tar, carbon monoxide and numerous toxic substances, whereas non-combustible products do not operate in the same way. They may include oral nicotine products, nicotine pouches, electronic cigarettes and heated-tobacco products.

The restriction on digital sales raises distinct constitutional questions and proposed less restrictive alternatives including mandatory age verification, identity authentication. payment-traceability requirements, licensing of online vendors, geolocation restrictions.

He further submitted that the broad powers conferred on the Cabinet Secretary raises a separate rule of law and administrative law concern. The provision allowing the Cabinet Secretary to approve, refuse, suspend or revoke licences without clear statutory criteria risks converting an administrative power into an unstructured legislative discretion. Therefore, the Bill should specify the licensing criteria, relevant evidence, time limits, reasons for refusal, renewal requirements, grounds for suspension, procedural protections and appeal mechanisms.

Committee Resolution: The Committee did not adopt the proposal. The WHO FCTC does not provide for a statutory risk continuum, and the Bill already addresses product risk through the pre-market approval and testing regime in sections 14C–14I, under which each product is assessed individually. On online sales, age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online. The Committee resolved that the powers of the Cabinet Secretary should be assigned to the Board, limiting the Cabinet Secretary functions to issuing policy guidelines and direction under the Act.

35) Amollo Simba & Associates Advocates (the Firm) submitted as follows:

390. **Amend Clause 3(c),** which expands the definition of "ingredients" to cover all substances in electronic nicotine delivery systems (ENDS), to require a risk-based assessment of ingredients, by adding the words "subject to toxicological risk thresholds and differentiated regulatory standards for non-combustible products."

Justification: The Firm argued that applying traditional tobacco ingredient checks to ENDS without adjustment is flawed in method, because burning (combustion) greatly changes chemical exposure. It submitted regulatory science, for example FDA frameworks, looks at exposure pathways and not only at whether an ingredient is present.

Committee Resolution: The Committee did not adopt the proposal. Risk is assessed under the product-approval provisions, and an overarching principle of risk-proportionality could be used to weaken controls on addictive products.

391. **Amend Clause 3(g),** the definition of "smoking", which now covers inhaling or exhaling smoke or vapour, including through an electronic delivery system, to separate burning from vapour. Replace it with: "'smoking' refers to inhalation of smoke from combustion of tobacco products. 'Vaping' or 'use of electronic delivery systems' shall be defined separately."

Justification: The Firm argued that combining smoking and vaping in one definition is scientifically inaccurate and risky for regulation. It submitted this leads to wrong policy choices further down the line on public bans, penalties and taxation, and that countries that have successfully cut smoking, such as the United Kingdom and New Zealand, define the two separately so that regulation can be targeted.

Committee Resolution: The Committee did not adopt the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour,

whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

392. **Amend Clause 3(h),** the definition of "tobacco product", to introduce product categorization. Insert a new subsection: "Tobacco products shall be categorised into (i) combustible tobacco products; and (ii) non-combustible nicotine delivery products and shall be regulated in accordance with their relative risk profiles as determined by the Authority based on scientific evidence."
Justification: The Firm described this as the most consequential problem in the Bill. It argued that by treating combustible cigarettes and non-combustible alternatives as the same, the clause removes the difference in risk between them. It submitted scientific consensus increasingly supports the view that burning is the main driver of disease, that countries such as the United Kingdom have written this distinction into policy and so speeded up quitting, and that failing to do so would in effect protect cigarettes from disruption.
Committee Resolution: The Committee did not adopt the proposal. Risk is assessed under the product-approval provisions, and an overarching principle of risk-proportionality could be used to weaken controls on addictive products.

393. **Amend Clause 3** definition of "tobacco smoke" to include aerosol, vapour or emissions produced by the use of an electronic delivery system, and to define these emissions separately as "aerosol emissions from non-combustible products."
Justification: The Firm called this a category error, saying vapour is not smoke. It argued that including vapour makes the product seem riskier than it is and justifies blanket restrictions, that the evidence on second-hand harm is very different for smoke and for vapour, and that the provision pushes policy toward prohibition instead of regulation.
Committee Resolution: The Committee did not adopt the proposal. The WHO FCTC does not provide for a statutory risk continuum, and the Bill already addresses product risk through the pre-market approval and testing regime in sections 14C–14I, under which each product is assessed individually.

394. **Amend Clause 3** to add an exception to the new definition of "characterising flavour", which now covers flavours broadly, including fruit, spice and menthol. Insert: "Characterising flavours in non-combustible products may be permitted subject to strict age-restriction, marketing controls, and product standards."
Justification: The Firm submitted flavour bans are politically attractive but weak on evidence. It argued that adult smokers depend on non-tobacco flavours to move away from cigarettes, that studies of quitting show better switching success with flavoured alternatives, and that blanket bans often lead to illicit (illegal) markets, as seen in several countries.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

395. **Amend Clause 4(c),** which gives power to prohibit the manufacture, sale, distribution or importation of a tobacco product that does not comply, by inserting a proportionality clause: "...with regulatory requirements proportionate to the risk profile of the product category."
Justification: The Firm argued that without proportionality the power becomes a blunt enforcement tool that unfairly hits reduced-risk products. It submitted regulatory theory and global best practice call for risk-based enforcement, and that otherwise enforcement resources are moved away from the most harmful products.
Committee Resolution: The Committee did not adopt the proposal. Risk is assessed under the product-approval provisions, and an overarching principle of risk-proportionality could be used to weaken controls on addictive products.

396. **Amend Clauses 5 and 5A,** which set up the Tobacco Control Advisory Committee with broad representation but no clear mandate on harm reduction or scientific innovation, by adding: "At least one member shall have demonstrated expertise in tobacco harm reduction, toxicology, or nicotine science."
Justification: The Firm argued that the design of the Committee builds in ideological bias unless it is corrected, since harm reduction is a scientific field. It submitted that without clear representation, policy risks being driven only by abstinence approaches and ignoring new evidence.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

397. **Insert a new overarching principle clause in the Bill**: "Regulation under this Act shall be guided by the principle of harm reduction, recognising a continuum of risk across nicotine-containing products."
Justification: The Firm noted that the structure of the Bill in effect subjects ENDS and nicotine pouches to the same restrictions as cigarettes (advertising, use and perception). It called the principle the missing spine of the Bill, arguing that without it all later regulation defaults to prohibition. It submitted countries that have reduced smoking fastest have written harm reduction into law or policy, and that Kenya risks a 20-year lag if this is not corrected.
Committee Resolution: The Committee did not adopt the proposal. Risk is assessed under the product-approval provisions, and an overarching principle of risk-proportionality could be used to weaken controls on addictive products.

36) Dr. Andrew Owuor, Lung and Respiratory Specialist at Kenyatta National Hospital, submitted as follows:

398. **Section 2 of the Bill (classification of products):** Separate vapes, heated tobacco and pouches from burning cigarettes in Section 2 of the Bill, and regulate them based on their actual chemical risk to users. Outlaw dangerous oils, additives and flavours, and retain only menthol and mint.

Justification: The Bill lumps cigarettes, vapes, e-liquids and oral nicotine pouches into a single regulatory basket, and treats non-combustible technologies identically to combustible tobacco. This tells the public that vaporising liquid is as dangerous as inhaling burning paper and tobacco leaf smoke. Dr. Owuor stated that lit cigarettes burn at 600 to 900 degrees Celsius and create tar, ash, carbon monoxide and cancer-causing gases, while heated tobacco products heat below 350 degrees Celsius, which prevents combustion and stops the creation of heavy tar and toxic gases. Vapour systems warm a leaf-free liquid mixture of nicotine and water at 100 to 250 degrees Celsius, which eliminates tobacco ash, tar and smoke particles. Citing the Royal College of Physicians (London), he stated that adult smokers who switch entirely from cigarettes to certified vapour products see a 95 to 99 per cent drop in toxic chemical exposure. A sensible law must treat the most dangerous products with the strictest rules, and less harmful alternatives with proportionate care. The proposal on flavours protects youth and allows access for adult smokers.

Committee Resolution: The Committee did not adopt the proposal for a separate risk-based regulatory category. The Bill already provides for pre-market approval and testing of each product (sections 14C–14I), in which the risk of a product is assessed, and WHO's position is that e-cigarettes and nicotine pouches are harmful and not safe, particularly for young people.

399. **Sections 14A and 14B (nicotine concentration):** Set a legal cap of 20 mg/mL on nicotine concentrations in alternative products.

Justification: The cap provides enough nicotine to help heavily addicted adult smokers switch away from combustible cigarettes, and prevents excessively high nicotine levels that can lead to rapid addiction and misuse by young non-smokers.

Committee Resolution: The Committee noted the support. The Bill already sets a maximum nicotine concentration of twenty milligrams per millilitre for electronic nicotine delivery systems and refill containers under section 14A in order to promote legal certainty and ease of enforcement. The Committee resolved to ban nicotine pouches under section 14B.

400. **Proposed additional Section; Ingredient and quality standards:** Mandate KEBS and Pharmacy and Poisons Board standards on purity and ingredients, as follows:

(i) nicotine purity of not less than 99 per cent, medical grade,
(ii) carrier liquids of pure food and pharmaceutical grade,
(iii) flavours containing no diacetyl, and
(iv) zero oils, including vitamin E acetate.

Justification: Medical-grade nicotine guarantees that no raw tobacco plant toxins remain in the liquid. Food and pharmaceutical-grade carrier liquids are safe for vaporising without clogging lung airways. Excluding diacetyl avoids chemicals known to irritate or scar lung tissue. Excluding oils prevents oil droplets from collecting in the lungs and protects against EVALI lung injury.

Committee Resolution: The Committee adopted the proposal in part. The Committee noted that the proposed section 14A already prohibits specified additives and requires the use of pure ingredients in electronic nicotine delivery systems. The Committee resolved that the detailed specifications on nicotine purity and the grade of carrier liquids and oils shall be prescribed by the Cabinet Secretary in regulations under section 53(1A).

401. **Sections 16 and 21 (patient information and warning labels):** Ensure that labels on vapes are clear and focus on the absence of smoke, rather than leading patients to think that vapes are the same as combustible cigarettes.
Justification: Doctors must share accurate medical facts with patients who are struggling to quit smoking. They should offer clear, graduated advice, and recommend harm-reduction options for patients who have tried and failed to quit using traditional methods.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, to apply to electronic nicotine delivery systems as provided in the Bill.

402. **(Proposed additional Section; Science reviews:** Require a national scientific audit every three years.
Justification: The audit ensures that Kenya's laws adjust as new global lung research emerges.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that Clause 8 requires an annual report on research activities and programmes, including research findings and their impact.

37) Professor Emeritus Prakit Vathesatogkit submitted as follows:

403. **Support for a Full Ban:** International health advocates strongly back Kenyan health authorities in calling for a complete ban on ENDS/ENNDS, heated tobacco products, and nicotine pouches.
Rejection of "Harm Reduction": These products are engineered to addict young non-smokers through enticing flavours and designs—spurring youth vaping surges without significantly reducing adult smoking.
Industry Accountability: Beyond total bans, governments must hold the tobacco industry financially liable for the health, social, and environmental damage caused by these products.
Committee Resolution: The Committee did not adopt the proposal. The Committee observed that a complete ban of the novel nicotine products is not desirable as it would lead to increase in illicit trade in nicotine products and nicotine pouches. The Committee resolved to retain a regulation model where electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches.

38) Dr. Praneet Valodia submitted as follows:

404. **Clause 3 and Clause 12 (differentiation of products):** Differentiate between combustible cigarettes and non-combustible nicotine products (e-cigarettes, heated tobacco products, nicotine pouches and snus), and regulate them separately in the same or another Bill in proportion to their risk to public health, adopting a framework like that of the United States Food and Drug Administration.

Justification: Non-combustible products produce 60–99% fewer toxicants than combustible cigarettes (U.S. FDA, 2018, 2020). Evidence from the Cochrane review (Lindson et al., 2024) and the Hajek et al. randomised trial (2019) shows that nicotine e-cigarettes are more effective than nicotine replacement therapy for smoking cessation, with similar safety. Sweden's experience with snus is cited as evidence that harm reduction saves lives. The submission states that the current Bill fails to differentiate between these products.

Committee Resolution: The Committee did not adopt the proposal for a separate risk-based regulatory category. The Bill already provides for pre-market approval and testing of each product (sections 14C–14I), in which the risk of a product is assessed, and WHO's position is that e-cigarettes and nicotine pouches are harmful and not safe, particularly for young people.

405. **Clause 12 (sections 14C–14I: net benefit to public health):** Assess non-combustible products using relative risk and net benefit to public health, weighing benefits and risks for the population, including youth and vulnerable groups, and create a separate category for modified-risk products.

Justification: The U.S. FDA has authorised 75 non-combustible products using relative risk and an "appropriate for the protection of public health" standard that takes net benefit into account. Presenting isolated information on these products, such as the gateway argument, is submitted to be misleading.

Committee Resolution: The Committee did not adopt the proposal to create a modified-risk category in the Act. The Committee resolved that evidence on relative risk and on the effect on youth uptake may be considered in the approval process under sections 14C–14I, and that no claim of reduced risk may be made on a product unless authorised in accordance with the Act.

406. **Clause 12 (section 14J: flavours):** Do not restrict flavours, as ingredients used to create flavours are generally not a risk factor and flavours help smokers to switch to non-combustible products.

Justification: There is controversy over whether flavours increase youth vaping, but flavours are associated with higher odds of adult smoking cessation, and as flavours are of minimal risk they support differentiation from combustible cigarettes.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

39) The Kenya Tobacco Control and Health Promotion Alliance (KETCA) submitted as follows:

407. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: The amended title reflects the products the Bill regulates.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

408. **Clause 3:** Retain the definition of "nicotine pouch" and refine it for enforcement clarity. Delete all consequential references in Clauses 16 and 23, and in any other clause, that presuppose the lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions.
Justification: KETCA proposed a prohibition model for nicotine pouches under the proposed section 14B. A clear definition of a prohibited product closes loopholes, supports seizure and prosecution, and keeps the law from normalising a new addictive consumer product.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

409. **Clause 3:** Retain the expanded definition of "ingredients" and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.
Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

410. **Clause 3:** Reject the shorter replacement definition of "advertisement". Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".
Justification: KETCA provided no separate justification for this proposal.
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO

FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

411. **Clause 3:** Insert new definitions as follows:

1) "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,
2) "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,
3) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,
4) "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of pouch, conical, cylindrical or any other package type,
5) "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and
6) "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: KETCA submitted that the new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

412. **Clause 3:** Retain the revised definition of "smoking" and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. WHO reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

413. **Clause 3:** Retain the definitions of "tobacco product" and "characterising flavour". Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

414. **Clause 3:** Amend the definition of "tobacco product" to read:

"tobacco product" means any product whether composed in whole or in part of tobacco, including tobacco leaves and any extract thereof, which are manufactured to be used for smoking, inhalation, chewing, sniffing, or sucking or to be consumed by any other means, and includes cigarette papers, tubes, filters, any electronic delivery systems, and the solutions or liquids intended for use in such devices.

Justification: KETCA stated that the definition covers conventional products such as cigarettes, cigars, cigarillos, waterpipe tobacco and smokeless tobacco. It also covers heated tobacco products, hybrid tobacco and e-cigarette products, and accessories. KETCA proposed separate definitions for "nicotine", "nicotine product" and "nicotine pouch" in place of adding language on synthetics and analogues to this definition.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to retain the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product".

415. **Clause 3:** Amend the definition of "electronic cigarette" to mean a product that can be used for the consumption of nicotine through inhalation through a mouthpiece, including any component such as a cartridge, tank or device, whether disposable, refillable or rechargeable, and that is not a medicinal substance or medical device under the Pharmacy and Poisons Act. A product that contains no nicotine but resembles an electronic cigarette, or is made for use with a similar device, shall be treated as an electronic cigarette or electronic nicotine delivery system under the Act.

Justification: The last limb brings electronic non-nicotine delivery systems within the Act. KETCA recommended removal of the terms "vape", "vaping" and "vape smoke" from the Bill and consistent use of "electronic cigarette" and "electronic nicotine delivery system".

Committee Resolution: The Committee adopted the proposal in part. The Committee noted that the definition of "electronic nicotine delivery system" in Clause 3 already applies to devices "whether or not the substance contains nicotine". The Committee resolved to

regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

416. **Clause 3:** Amend the definition of "electronic nicotine delivery system" to mean an electronic device, with any accessories, components or parts, designed or capable of being used to aerosolise, vaporise or otherwise convert a substance into an inhalable form and deliver it to a person through inhalation, whether or not the substance contains nicotine. The definition should include electronic cigarettes, cigars, cigarillos and hookahs, vape pens, vape pods and similar devices of any shape, size or appearance, together with the non-nicotine limb proposed for "electronic cigarette".
Justification: The definition captures e-cigarettes, e-hookahs, e-cigarillos, e-liquids and non-nicotine products.
Committee Resolution: The Committee adopted the proposal in part. The definition of 'electronic nicotine delivery system' covers electronic hookahs. Shisha is separately defined and prohibited under the proposed section 14B.

417. **Clause 3:** Insert a new definition of "flavour additive" to mean an additive or combination of additives, natural or synthetic, that imparts, modifies, improves or intensifies the taste, scent or sensation of a tobacco product, electronic nicotine delivery system or nicotine product, including a nicotine pouch, or otherwise increases its palatability. The definition includes fruit, spice, herbs, alcohol, candy, menthol, mint, chocolate and vanilla, and additives activated by the user, and excludes tobacco-only flavours.
Justification: KETCA proposed this term in place of "characterising flavour" and "flavouring agent". Industry has evaded bans on characterising flavours in other jurisdictions, and the term lacks clarity. The definition would still permit tobacco-flavoured products. The Committee notes that this departs from the proposals on "flavouring agent" and "characterising flavour" in KETCA's own matrix.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to retain the term "characterising flavour", which it has extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect.

418. **Clause 3:** Insert new definitions as follows:
1) "nicotine" means any form of the chemical nicotine, including any salt or complex, whether naturally or synthetically derived, and includes nicotinic alkaloids and nicotine analogues,
2) "nicotine product" means a substance or mixture containing nicotine manufactured for human consumption, other than a tobacco product, that is not a medicinal substance or medical device under the Pharmacy and Poisons Act, and
3) "nicotine pouch" means a type of nicotine product manufactured for oral use and not inhalation, presented as pouches, packets or similar sachets, with or without other ingredients or additives.

Justification: KETCA submitted that a definition of "nicotine" covering all natural and synthetic forms and analogues, read with the product definitions, closes gaps. A general "nicotine product" definition future-proofs the Act against products such as nicotine sprays and lozenges. The "nicotine pouch" definition does not limit nicotine to powder form.

Committee Resolution: The Committee adopted the proposal in part. The Committee noted that the definition of "tobacco product" in Clause 3 includes nicotine from any source, synthetic nicotine and nicotine analogues. The Committee further resolved to include a definition of "nicotine product". The Committee further resolved to regulate the use of electronic nicotine delivery systems and to exclude nicotine products that are approved as a tobacco cessation product or other medicinal substance provided that the product is marketed and sold or prescribed exclusively for that approved purpose.

419. **Clause 3:** Amend the definition of "smoking" to mean inhaling or exhaling substances emitted from the use of any tobacco product or electronic nicotine delivery system, including holding or controlling any such ignited or activated product. Delete the definition of "tobacco smoke".

Justification: The words "smoke" and "vapour" repeat the defined term or remain undefined. The definition covers shisha, so KETCA recommended against new definitions of "aerosol" and "shisha smoking". A single definition avoids confusion and supports a comprehensive ban on smoking in public places in line with Article 8 of the FCTC. The Committee notes that this position departs from the proposals on "aerosol", "shisha smoking" and "smoking" in KETCA's own matrix.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

420. **Clause 3:** Insert new definitions as follows:

1) "enclosed" means any space covered by a roof or having one or more walls or sides, regardless of the material used and whether the structure is permanent or temporary,
2) "public place" means a place accessible to the general public or used collectively, regardless of ownership or right of access,
3) "public transport" means any vehicle used to carry members of the public, usually for reward or commercial gain, including taxis, and
4) "workplace" means any place used by one or more persons during employment, contract, voluntary or other work, including any area used in or incidental to the work, and work vehicles.

Justification: KETCA stated that these terms support a comprehensive ban on smoking in public places, workplaces and public transport. KETCA noted that the Tobacco Control Regulations already contain many of these terms and asked whether the Bill should include them.

Committee Resolution: The Committee did not adopt the proposal, noting that the term "public place" is defined in the Act, while the terms "enclosed", "public transport" and

"workplace" are already provided for in the Tobacco Control Regulations. The proposed definitions are therefore unnecessary.

421. **Clause 3:** Amend the definition of "advertisement" to mean any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product, electronic cigarette, electronic delivery system or nicotine product, including a nicotine pouch, or the use of such products, directly or indirectly. Insert a matching definition of "sponsorship" covering any contribution to an event or activity with the same aim or effect.
Justification: The Act should prohibit advertising, promotion and sponsorship of every regulated product, including products it bans from sale or import. The Committee notes that KETCA's matrix separately proposes to retain the existing definition of "advertisement".
Committee Resolution: The Committee adopted the proposal in part. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

422. **Clause 5:** Amend the proposed Tobacco Control Advisory Committee by:

1) removing the seat for the Kenya National Chamber of Commerce and Industry nominee,
2) requiring public disclosure of interests, minutes, agendas and all meetings with industry, prohibiting gifts, partnerships and non-essential interactions, and requiring recusals backed by sanctions,
3) replacing the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and
4) requiring the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. KETCA noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the membership includes a representative of non-governmental organisations involved in tobacco control and a representative of the Council of Governors. Further, with regard to the member representing the business community. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed new section 5B.

423. **Clause 7:** Amend section 7 of the principal Act by:

1) setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,
2) amending section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support, and
3) inserting a new subsection empowering the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumbering subsection (5) as subsection (6).

Justification: An open-ended contribution invites lobbying and leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. KETCA stated that enforcement of tobacco control is a devolved function, yet the Ministry of Health does not channel Fund money to county enforcement programmes. Research institutions and civil society deliver research and public awareness more effectively. Public reporting ties the Fund visibly to health protection.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

424. **Clause 10:** Retain the provisions on tax and price policies and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. KETCA cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is

mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

425. **Clause 12, proposed section 14A:** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.
Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. KETCA cited data showing that 5.8 percent of university students use e-cigarettes.
Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

426. **Clause 12, proposed section 14B:** Delete the proposed section and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.
Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. KETCA cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern points to deliberate targeting of young people. Use among adolescents stands at 0.22 percent, and a ban would keep it low.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

427. **Clause 12, proposed sections 14C to 14I:** Retain the pre-market approval provisions and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.
Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

428. **Clause 12, proposed section 14J:** Retain the prohibition on additives and characterising flavours and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.
Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. KETCA cited the Netherlands' move to tobacco-flavour-only e-liquids.
Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

429. **Clause 13:** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".
Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

430. **Clause 13, section 15(1):** Amend section 15(1) to prohibit the sale, supply or distribution of any tobacco or nicotine product to a person under 18 years or a person born on or after 1 January 2010.
Justification: KETCA proposed a smoke-free generation policy to phase out tobacco use in future generations, in line with a long-term tobacco endgame strategy. The Committee notes that this proposal uses an age threshold of 18 years, while KETCA's matrix proposes 21 years.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

431. **Clause 13, new section 15(1A):** Insert a new section 15(1A) providing that a person born on or after 1 January 2010 shall never be eligible to buy, receive or access tobacco products in Kenya, even after attaining 18 years.
Justification: The provision closes the loophole through which age alone would later allow access.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

432. **Clause 13, new section 15(1B):** Insert a new section 15(1B) requiring vendors and retailers to verify age and date of birth using a national identity card, passport, driving licence or other prescribed document before any sale.
Justification: Mandatory verification makes sellers accountable and reduces illegal sales.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

433. **Clause 13, new section 15(1C):** Insert a new section 15(1C) providing a penalty of a fine not exceeding five hundred thousand shillings, imprisonment not exceeding three years, or both, for breach of the generational ban.
Justification: Existing penalties do not address generational ban violations. A specific penalty deters unlawful sales.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that the age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

434. **Clause 13, new section 15(1D):** Insert a new section 15(1D) empowering the court to suspend or cancel the business licence of a repeat offender.
Justification: Licence sanctions strengthen enforcement beyond criminal penalties and reduce repeat offences.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

435. **Clause 16:** Retain the ban on online sales in the proposed section 19A and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. KETCA cited enforcement against online vape sales in Belgium and the Netherlands' ban on cross-border online sales.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

436. **Clauses 17 and 19:** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.
Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

437. **Clauses 18 and 23:** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.
Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews support the finding that standardised packaging reduces appeal.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems

as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

438. **Clause 19, proposed section 21B:** Retain the prohibition on single-use plastics and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

439. **Clauses 20 and 21:** Expand the advertising provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship. The ban should cover digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.
Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. KETCA stated that Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

440. **Clauses 22 and 24:** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from places where they may exist, and amend section 35(2)(b)(iii) to require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict

engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

441. **Clause 26:** Expand the regulation-making power in section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.
Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

442. **New clause:** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.
Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

40) Development Gateway submitted as follows:

443. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: The amended title reflects the products the Bill regulates.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

444. **Clause 3:** Retain the definition of "nicotine pouch" and refine it for enforcement clarity. Delete all consequential references in Clauses 16 and 23, and in any other clause, that presuppose the lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions.
Justification: Development Gateway proposed a prohibition model for nicotine pouches under the proposed section 14B. A clear definition of a prohibited product closes loopholes, supports seizure and prosecution, and keeps the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

445. **Clause 3:** Retain the expanded definition of "ingredients" and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.
Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

446. **Clause 3:** Reject the shorter replacement definition of "advertisement". Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".
Justification: Development Gateway provided no separate justification for this proposal.
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

447. **Clause 3:** Insert new definitions as follows:
1) "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,
2) "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,
3) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,
4) "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of pouch, conical, cylindrical or any other package type,

5) "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and
6) "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: Development Gateway submitted that the new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

448. **Clause 3:** Retain the revised definition of "smoking" and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. WHO reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

449. **Clause 3:** Retain the definitions of "tobacco product" and "characterising flavour". Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

450. **Clause 5:** Amend the proposed Tobacco Control Advisory Committee by:
1) removing the seat for the Kenya National Chamber of Commerce and Industry nominee,

2) requiring public disclosure of interests, minutes, agendas and all meetings with industry, prohibiting gifts, partnerships and non-essential interactions, and requiring recusals backed by sanctions,
3) replacing the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and
4) requiring the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. Development Gateway noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

451. **Clause 7:** Amend section 7 of the principal Act by:

1) setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,
2) amending section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support, and
3) inserting a new subsection empowering the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumbering subsection (5) as subsection (6).

Justification: An open-ended contribution invites lobbying and leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. Development Gateway stated that enforcement of tobacco control is a devolved function, yet the Ministry of Health does not channel Fund money to county enforcement programmes. Research institutions and civil society deliver research and public awareness more effectively. Public reporting ties the Fund visibly to health protection.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of

information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

452. **Clause 10:** Retain the provisions on tax and price policies and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. Development Gateway cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

453. **Clause 12, proposed section 14A:** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. Development Gateway cited data showing that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

454. **Clause 12, proposed section 14B:** Delete the proposed section and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.
Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. Development Gateway cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern points to deliberate targeting of young people. Use among adolescents stands at 0.22 percent, and a ban would keep it low.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

455. **Clause 12, proposed sections 14C to 14I:** Retain the pre-market approval provisions and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.
Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

456. **Clause 12, proposed section 14J:** Retain the prohibition on additives and characterising flavours and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.
Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. Development Gateway cited the Netherlands' move to tobacco-flavour-only e-liquids.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

457. **Clause 13:** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".
Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

458. **Clause 16:** Retain the ban on online sales in the proposed section 19A and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Development Gateway cited enforcement against online vape sales in Belgium and the Netherlands' ban on cross-border online sales.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

459. **Clauses 17 and 19:** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.
Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers, and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density

controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

460. **Clauses 18 and 23:** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.
Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews support the finding that standardised packaging reduces appeal.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

461. **Clause 19, proposed section 21B:** Retain the prohibition on single-use plastics and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

462. **Clauses 20 and 21:** Expand the advertising provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship. The ban should cover digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.
Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Development Gateway stated that Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

463. **Clauses 22 and 24:** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from places where they may exist, and amend section 35(2)(b)(iii) to require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.

Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

464. **Clause 26:** Expand the regulation-making power in section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.

Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

465. **New clause:** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.

Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

41) Diplomats for Health in Resilient Community (DFH-RC) submitted as follows:

466. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: The amended title reflects the products the Bill regulates.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

467. **Clause 3:** Retain the definition of "nicotine pouch" and refine it for enforcement clarity. Delete all consequential references in Clauses 16 and 23, and in any other clause, that presuppose the lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions.
Justification: DFH-RC proposed a prohibition model for nicotine pouches under the proposed section 14B. A clear definition of a prohibited product closes loopholes, supports seizure and prosecution, and keeps the law from normalising a new addictive consumer product.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

468. **Clause 3:** Retain the expanded definition of "ingredients" and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.
Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

469. **Clause 3:** Reject the shorter replacement definition of "advertisement". Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".
Justification: DFH-RC provided no separate justification for this proposal.
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO

FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

470. **Clause 3:** Insert new definitions as follows:

1) "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,
2) "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,
3) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,
4) "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of pouch, conical, cylindrical or any other package type,
5) "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and
6) "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: DFH-RC submitted that the new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

471. **Clause 3:** Retain the revised definition of "smoking" and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. WHO reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

472. **Clause 3:** Retain the definitions of "tobacco product" and "characterising flavour". Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

473. **Clause 5:** Amend the proposed Tobacco Control Advisory Committee by:

1) removing the seat for the Kenya National Chamber of Commerce and Industry nominee,
2) requiring public disclosure of interests, minutes, agendas and all meetings with industry, prohibiting gifts, partnerships and non-essential interactions, and requiring recusals backed by sanctions,
3) replacing the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and
4) requiring the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. DFH-RC noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

474. **Clause 7:** Amend section 7 of the principal Act by:

1) setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,
2) amending section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support, and

3) inserting a new subsection empowering the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumbering subsection (5) as subsection (6).

Justification: An open-ended contribution invites lobbying and leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. DFH-RC stated that enforcement of tobacco control is a devolved function, yet the Ministry of Health does not channel Fund money to county enforcement programmes. Research institutions and civil society deliver research and public awareness more effectively. Public reporting ties the Fund visibly to health protection.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

475. **Clause 10:** Retain the provisions on tax and price policies and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. DFH-RC cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

476. **Clause 12, proposed section 14A:** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. DFH-RC cited data showing that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

477. **Clause 12, proposed section 14B:** Delete the proposed section and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.

Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. DFH-RC cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern points to deliberate targeting of young people. Use among adolescents stands at 0.22 percent, and a ban would keep it low.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

478. **Clause 12, proposed sections 14C to 14I:** Retain the pre-market approval provisions and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

479. **Clause 12, proposed section 14J:** Retain the prohibition on additives and characterising flavours and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.

Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. DFH-RC cited the Netherlands' move to tobacco-flavour-only e-liquids.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

480. **Clause 13:** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".

Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

481. **Clause 16:** Retain the ban on online sales in the proposed section 19A and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. DFH-RC cited enforcement against online vape sales in Belgium and the Netherlands' ban on cross-border online sales.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

482. **Clauses 17 and 19:** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.
Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers, NS importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

483. **Clauses 18 and 23:** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.
Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews support the finding that standardised packaging reduces appeal.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

484. **Clause 19, proposed section 21B:** Retain the prohibition on single-use plastics and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with

the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

485. **Clauses 20 and 21:** Expand the advertising provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship. The ban should cover digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.
Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. DFH-RC stated that Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

486. **Clauses 22 and 24:** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from places where they may exist, and amend section 35(2)(b)(iii) to require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

487. **Clause 26:** Expand the regulation-making power in section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.
Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

488. **New clause:** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.
Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

42) Women Amplifying Voices Against Impunity CBO (WEKESWA) submitted as follows:

489. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: The amended title reflects the products the Bill regulates.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

490. **Clause 3:** Retain the definition of "nicotine pouch" and refine it for enforcement clarity. Delete all consequential references in Clauses 16 and 23, and in any other clause, that presuppose the lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions.
Justification: WEKESWA proposed a prohibition model for nicotine pouches under the proposed section 14B. A clear definition of a prohibited product closes loopholes, supports seizure and prosecution, and keeps the law from normalising a new addictive consumer product.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

491. **Clause 3:** Retain the expanded definition of "ingredients" and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.
Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives.

A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

492. **Clause 3:** Reject the shorter replacement definition of "advertisement". Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".

Justification: WEKESWA provided no separate justification for this proposal.

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

493. **Clause 3:** Insert new definitions as follows:

1) "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,
2) "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,
3) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,
4) "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of pouch, conical, cylindrical or any other package type,
5) "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and
6) "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: WEKESWA submitted that the new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

494. **Clause 3:** Retain the revised definition of "smoking" and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.
Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. WHO reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

495. **Clause 3:** Retain the definitions of "tobacco product" and "characterising flavour". Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".
Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

496. **Clause 5:** Amend the proposed Tobacco Control Advisory Committee by:

1) removing the seat for the Kenya National Chamber of Commerce and Industry nominee,
2) requiring public disclosure of interests, minutes, agendas and all meetings with industry, prohibiting gifts, partnerships and non-essential interactions, and requiring recusals backed by sanctions,
3) replacing the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and
4) requiring the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent

route into the Committee that conflict-of-interest rules cannot cure. WEKESWA noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

497. **Clause 7:** Insert a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation. Require annual publication of collections and use of the Fund.

Justification: An open-ended contribution leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. A statutory floor secures predictable funding for prevention, cessation, enforcement and treatment.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

498. **Clause 7:** Amend section 7(4) of the principal Act so that the Fund meets capital and current expenditure on:

1) research, documentation and dissemination of information on tobacco and nicotine products,
2) national cessation and rehabilitation programmes,
3) public education, awareness creation and advocacy on the health, economic and environmental harms of tobacco and nicotine products,
4) treatment and management of chronic illnesses caused by tobacco use, including cancers, cardiovascular diseases and chronic respiratory diseases,
5) community-based tobacco control programmes run by youth groups, faith-based organisations, civil society organisations and non-governmental organisations, and
6) any matter incidental to the above.

Justification: The Act and the Bill do not fund public awareness, community programmes led by civil society, or treatment of tobacco-related disease. Counties and civil society carry

enforcement and education roles without dedicated funding. Leaving out treatment costs sits poorly with the right to health under Article 43 of the Constitution. WEKESWA aligned the proposal with Article 12 of the FCTC on education and Article 5.3 on independent civil society monitoring.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

499. **Clause 7:** Insert a new section 7(4A) allocating not less than 15 percent of annual disbursements from the Fund to Kenyan civil society organisations and non-governmental organisations for tobacco control programmes, public education and advocacy.

Justification: Without a minimum allocation, grassroots advocacy and community monitoring remain under-resourced. The allocation creates a predictable, industry-funded resource for civil society at national and county levels.

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

500. **Clause 10:** Retain the provisions on tax and price policies and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. WEKESWA cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

501. **Clause 12, proposed section 14A:** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed

systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. WEKESWA cited data showing that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

502. **Clause 12, proposed section 14B:** Delete the proposed section and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.

Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. WEKESWA cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern points to deliberate targeting of young people. Use among adolescents stands at 0.22 percent, and a ban would keep it low.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

503. **Clause 12, proposed sections 14C to 14I:** Retain the pre-market approval provisions and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

504. **Clause 12, proposed section 14J:** Retain the prohibition on additives and characterising flavours and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.
Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. WEKESWA cited the Netherlands' move to tobacco-flavour-only e-liquids.
Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

505. **Clause 13:** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".
Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

506. **Clause 16:** Retain the ban on online sales in the proposed section 19A and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. WEKESWA cited enforcement against online vape sales in Belgium and the Netherlands' ban on cross-border online sales.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

507. **Clauses 17 and 19:** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.
Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

508. **Clauses 18 and 23:** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.
Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews support the finding that standardised packaging reduces appeal.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

509. **Clause 19, proposed section 21B:** Retain the prohibition on single-use plastics and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

510. **Clauses 20 and 21:** Expand the advertising provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship. The ban should cover digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.
Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. WEKESWA stated that Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

511. **Clauses 22 and 24:** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from places where they may exist, and amend section 35(2)(b)(iii) to require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

512. **Clause 26:** Expand the regulation-making power in section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.
Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

513. **Clause 26:** Insert a new section 53(2)(f) empowering the Cabinet Secretary to prescribe the criteria, application procedure, vetting process, reporting obligations and disbursement

mechanisms for funding to non-governmental and civil society organisations engaged in tobacco control, including requirements for accountability, audit and geographic equity.

Justification: Without clear regulations, smaller and county-based organisations may fail to access the Fund. Regulations make the 15 percent allocation workable, prevent political capture, and meet the requirements of the Public Finance Management Act for fair and accountable disbursement.

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

514. **New clause:** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.

Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

43) Child Space Organization submitted as follows:

515. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: The amended title reflects the products the Bill regulates.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

516. **Clause 3:** Retain the definition of "nicotine pouch" and refine it for enforcement clarity. Delete all consequential references in Clauses 16 and 23, and in any other clause, that presuppose the lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions.

Justification: Child Space Organization proposed a prohibition model for nicotine pouches under the proposed section 14B. A clear definition of a prohibited product closes loopholes, supports seizure and prosecution, and keeps the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete

ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

517. **Clause 3:** Retain the expanded definition of "ingredients" and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.
Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

518. **Clause 3:** Reject the shorter replacement definition of "advertisement". Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".
Justification: Child Space Organization provided no separate justification for this proposal.
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

519. **Clause 3:** Insert new definitions as follows:
1) "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,
2) "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,
3) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,
4) "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of pouch, conical, cylindrical or any other package type,
5) "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses,

honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and

6) "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: Child Space Organization submitted that the new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

520. **Clause 3:** Retain the revised definition of "smoking" and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. WHO reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

521. **Clause 3:** Retain the definitions of "tobacco product" and "characterising flavour". Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

522. **Clause 5:** Amend the proposed Tobacco Control Advisory Committee by:

1) removing the seat for the Kenya National Chamber of Commerce and Industry nominee,
2) requiring public disclosure of interests, minutes, agendas and all meetings with industry, prohibiting gifts, partnerships and non-essential interactions, and requiring recusals backed by sanctions,

3) replacing the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and
4) requiring the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. Child Space Organization noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

523. **Clause 7:** Insert a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation. Require annual publication of collections and use of the Fund.

Justification: An open-ended contribution leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. A statutory floor secures predictable funding for prevention, cessation, enforcement and treatment.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

524. **Clause 7:** Amend section 7(4) of the principal Act so that the Fund meets capital and current expenditure on:
1) research, documentation and dissemination of information on tobacco and nicotine products,
2) national cessation and rehabilitation programmes,
3) public education, awareness creation and advocacy on the health, economic and environmental harms of tobacco and nicotine products,

4) treatment and management of chronic illnesses caused by tobacco use, including cancers, cardiovascular diseases and chronic respiratory diseases,
5) community-based tobacco control programmes run by youth groups, faith-based organisations, civil society organisations and non-governmental organisations, and
6) any matter incidental to the above.

Justification: The Act and the Bill do not fund public awareness, community programmes led by civil society, or treatment of tobacco-related disease. Counties and civil society carry enforcement and education roles without dedicated funding. Leaving out treatment costs sits poorly with the right to health under Article 43 of the Constitution. Child Space Organization aligned the proposal with Article 12 of the FCTC on education and Article 5.3 on independent civil society monitoring.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

525. **Clause 7:** Insert a new section 7(4A) allocating not less than 15 percent of annual disbursements from the Fund to Kenyan civil society organisations and non-governmental organisations for tobacco control programmes, public education and advocacy.

Justification: Without a minimum allocation, grassroots advocacy and community monitoring remain under-resourced. The allocation creates a predictable, industry-funded resource for civil society at national and county levels.

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

526. **Clause 10:** Retain the provisions on tax and price policies and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. Child Space Organization cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention

of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

527. **Clause 12, proposed section 14A:** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.
Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. Child Space Organization cited data showing that 5.8 percent of university students use e-cigarettes.
Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

528. **Clause 12, proposed section 14B:** Delete the proposed section and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.
Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. Child Space Organization cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern points to deliberate targeting of young people. Use among adolescents stands at 0.22 percent, and a ban would keep it low.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

529. **Clause 12, proposed sections 14C to 14I:** Retain the pre-market approval provisions and require a public health impact statement, independent laboratory testing at the manufacturer's

cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

530. **Clause 12, proposed section 14J:** Retain the prohibition on additives and characterising flavours and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.

Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. Child Space Organization cited the Netherlands' move to tobacco-flavour-only e-liquids.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

531. **Clause 13:** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".

Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

532. **Clause 16:** Retain the ban on online sales in the proposed section 19A and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful

listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Child Space Organization cited enforcement against online vape sales in Belgium and the Netherlands' ban on cross-border online sales.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

533. **Clauses 17 and 19:** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.

Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

534. **Clauses 18 and 23:** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.

Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews support the finding that standardised packaging reduces appeal.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

535. **Clause 19, proposed section 21B:** Retain the prohibition on single-use plastics and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.

Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

536. **Clauses 20 and 21:** Expand the advertising provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship. The ban should cover digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.

Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Child Space Organization stated that Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

537. **Clauses 22 and 24:** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from places where they may exist, and amend section 35(2)(b)(iii) to require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.

Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

538. **Clause 26:** Expand the regulation-making power in section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.

Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

539. **Clause 26:** Insert a new section 53(2)(f) empowering the Cabinet Secretary to prescribe the criteria, application procedure, vetting process, reporting obligations and disbursement mechanisms for funding to non-governmental and civil society organisations engaged in tobacco control, including requirements for accountability, audit and geographic equity.

Justification: Without clear regulations, smaller and county-based organisations may fail to access the Fund. Regulations make the 15 percent allocation workable, prevent political capture, and meet the requirements of the Public Finance Management Act for fair and accountable disbursement.

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

540. **New clause:** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.

Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

44) The Nyandarua Cancer Support Group submitted as follows:

541. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: The amended title reflects the products the Bill regulates.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

542. **Clause 3:** Retain the definition of "nicotine pouch" and refine it for enforcement clarity. Delete all consequential references in Clauses 16 and 23, and in any other clause, that presuppose the lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions.

Justification: The Group proposed a prohibition model for nicotine pouches under the proposed section 14B. A clear definition of a prohibited product closes loopholes, supports seizure and prosecution, and keeps the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

543. **Clause 3:** Retain the expanded definition of "ingredients" and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.

Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

544. **Clause 3:** Reject the shorter replacement definition of "advertisement". Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".

Justification: The Group provided no separate justification for this proposal.

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

545. **Clause 3:** Insert new definitions as follows:

1) "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,
2) "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a

component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,

3) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,
4) "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of pouch, conical, cylindrical or any other package type,
5) "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and
6) "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: The Group submitted that the new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

546. **Clause 3:** Retain the revised definition of "smoking" and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. WHO reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

547. **Clause 3:** Retain the definitions of "tobacco product" and "characterising flavour". Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

548. **Clause 5:** Amend the proposed Tobacco Control Advisory Committee by:

1) removing the seat for the Kenya National Chamber of Commerce and Industry nominee,
2) requiring public disclosure of interests, minutes, agendas and all meetings with industry, prohibiting gifts, partnerships and non-essential interactions, and requiring recusals backed by sanctions,
3) replacing the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and
4) requiring the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. The Group noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Comrnittee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

549. **Clause 7:** Amend section 7 of the principal Act by:

1) setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,
2) amending section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support, and
3) inserting a new subsection empowering the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumbering subsection (5) as subsection (6).

Justification: An open-ended contribution invites lobbying and leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. The Group stated that enforcement of tobacco control is a devolved function, yet the Ministry of Health does not channel Fund money to county enforcement programmes. Research institutions and

civil society deliver research and public awareness more effectively. Public reporting ties the Fund visibly to health protection.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

550. **Clause 10:** Retain the provisions on tax and price policies and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. The Group cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

551. **Clause 12, proposed section 14A:** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and

Belgium have banned disposable vapes. The Group cited data showing that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

552. **Clause 12, proposed section 14B:** Delete the proposed section and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.

Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. The Group cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern points to deliberate targeting of young people. Use among adolescents stands at 0.22 percent, and a ban would keep it low.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

553. **Clause 12, proposed sections 14C to 14I:** Retain the pre-market approval provisions and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

554. **Clause 12, proposed section 14J:** Retain the prohibition on additives and characterising flavours and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.
Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. The Group cited the Netherlands' move to tobacco-flavour-only e-liquids.
Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

555. **Clause 13:** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".
Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

556. **Clause 16:** Retain the ban on online sales in the proposed section 19A and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. The Group cited enforcement against online vape sales in Belgium and the Netherlands' ban on cross-border online sales.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

557. **Clauses 17 and 19:** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.

Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

558. **Clauses 18 and 23:** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.

Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews support the finding that standardised packaging reduces appeal.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

559. **Clause 19, proposed section 21B:** Retain the prohibition on single-use plastics and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.

Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

560. **Clauses 20 and 21:** Expand the advertising provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship. The ban should cover digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.

Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. The Group stated that Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

561. **Clauses 22 and 24:** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from places where they may exist, and amend section 35(2)(b)(iii) to require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

562. **Clause 26:** Expand the regulation-making power in section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.
Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

563. **New clause:** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.
Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

45) The Pubs, Entertainment and Restaurants Association of Kenya (PERAK), in a separate memorandum, submitted as follows:

564. **Clause 12, proposed section 14J(1)(f):** Reject or substantially refine the proposed flavour restriction, read with the definition of "characterising flavour" in Clause 3. Replace the total prohibition with targeted restrictions on youth access and youth appeal that preserve lawful adult choice.

Justification: PERAK stated that flavours drive adult consumer preferences, especially among smokers moving from cigarettes to alternative nicotine products. The restriction does not distinguish combustible tobacco from alternative products with a different risk profile. A total ban would stop lawful traders from meeting adult demand while the demand remains, and shift supply to illicit channels. This outcome would harm both public health and revenue.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

565. **Clauses 17 and 19, proposed sections 20A and 21A:** Delete the proposed sections. Recognise existing county licensing frameworks, such as the Unified Business Permit, as the primary point of retail regulation, and integrate any additional public health requirements without duplication.

Justification: The proposed sections require dealers to obtain a county licence and a separate registration from the Ministry of Health. Parallel regimes for the same activity raise compliance costs, create uncertainty and uneven enforcement across counties and agencies, and add friction for premises that already hold county licences. They also create room for black-market traders who seek no licence and remain less visible to regulators.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

46) The Network of TB Champions Kenya (NTBC-K) submitted as follows:

(a) **Amend Interpretation / new objects** to add 'tobacco-related disease' and/or 'lung health'; add integrated public-health objects.

Justification: The NTBC-K argued that this creates the statutory bridge from product control to health outcomes.

566. **Amend clause 18 Packaging/warnings** to require periodic evidence-based disease-specific warning review.
Justification: NTBC-K submitted that this will support risk communication for TB, cancer and chronic lung disease.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that Clause 8 requires an annual report on research activities and programmes, including research findings and their impact.

567. **Amend (clauses 22-24) Smokefree-designated areas** to frame second-hand exposure protection as disease prevention and align enforcement with respiratory/public-health priorities.
Justification: NTBC-K submitted that this protects people with asthma, chronic lung disease, TB and other vulnerabilities
Committee Resolution: The Committee noted the support. Clauses 22 and 24 expand smoke-free places and extend them to electronic nicotine delivery systems, and the Committee resolved to retain them.

568. **Insert New health-service provision** to add integrated screening, brief intervention, cessation, treatment and referral.
Justification: NTBC-K submitted that this completes the pathway from regulation to patient-level care.
Committee Resolution: The Committee noted the support. Cessation and rehabilitation are among the purposes of the Fund under section 7(4) of the Act, and Clause 10 of the Bill provides for allocation of part of tobacco revenue to non-communicable disease prevention and control. The delivery of cessation services in primary health care is a matter for the Ministry of Health and counties to be addressed in the regulations and in county implementation plans.

569. **Insert New harmonisation provision** to add relationship-with-other-laws clause.
Justification: NTBC-K submitted that this prevents duplication, mandate conflict and siloed implementation.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that there is no conflict between the Bill and other existing laws.

47) Tobacco industry manufacturers and importers

Vide a letter to the Clerk of the National Assembly, the tobacco industry manufacturers and importers sought additional time, up to 8th May 2026, to submit their views.
They did not thereafter submit a memorandum.

48) The People Living with NCDs submitted as follows:

570. **Amend the title** to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

571. **Amend Clause 3** to retain and refine the definition of "nicotine pouch" in section 2 for enforcement clarity, but delete proposed section 14B in its current form and replace it with an express prohibition as follows: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch."

Further, delete all consequential references that presuppose the lawful sale or display of nicotine pouches, except where such references are necessary for seizure, enforcement or offence provisions.

Justification: A prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to conceal, easy to use in smoke-free spaces, and often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified nicotine pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk. WHO has also called for urgent action to ban flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and entrench dependence, especially among children and young people. Retaining a clear definition while prohibiting the product closes loopholes, supports seizure and prosecution, and prevents the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

572. **Amend Clause 3** to retain the expanded definition but expressly add: "constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use" and require disclosure of device-component emissions.

Justification: This should be widened beyond ingredients physically present in the product at the point of sale. For novel nicotine products, major risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the bottled liquid or pouch contents matter, even where the actual inhaled aerosol contains additional toxicants. The better approach is to regulate both product contents and product disclosures, including emissions and contaminants released in normal use. That aligns the Bill with modern product-regulation practice and makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

573. **Amend Clause 3** to reject the replacement definition proposed in the Bill. Retain the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics."
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

574. **Amend Clause 3** to insert new definitions for the specified terms. The proposed definitions include:
(i) "aerosol", referring to the emission discharged from an electronic cigarette when the electronic liquid comes into contact with a heated electric coil or another source of heat;
(ii) "flavouring agent", covering ingredients or additives other than tobacco that are added to a tobacco product or enhance its use, appeal or addictiveness;
(iii) "plain packaging", referring to restrictions or prohibitions on logos, colours, brand images and promotional information on packaging, other than standardised presentation of brand and product names;
(iv) "principal display area", covering the relevant surfaces of different types of tobacco-product packaging; and definitions of "shisha" and "shisha smoking".
Justification: Intended to close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

575. **Amend Clause 3** to retain the revised definition but make it explicit that it covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Justification: The definition should close the common loophole under which sellers market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. WHO states that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or

not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

576. **Amend Clause 3** to retain and strengthen the provisions by defining nicotine analogues functionally and extending "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar terms.

Justification: Industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for bans on ingredients that increase attractiveness and palatability. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

577. **Amend Clause 5 by deleting section 5A(1)(g)** entirely. Amend section 5A(2) to clarify that the remaining members are appointed by the Cabinet Secretary. Amend the provision concerning a person with expertise in tobacco to read: "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health." The provision concerning one person representing NGOs involved in tobacco control should also be amended to require nomination by the Cabinet Secretary for Health.

Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures. Article 5.3 requires protection of public health policies from the commercial and other vested interests of the tobacco industry. The current conflict-of-interest wording is useful but insufficient if the Committee still institutionalises an industry-adjacent nomination route. The safer model is to remove the seat altogether and legislate transparency, limited interactions and enforceable recusals. The Supreme Court has already upheld strong tobacco-control regulations, including limits on interactions between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

578. **Amend Clause 7** by inserting a statutory floor of not less than 2 per cent of the ex-factory value or import value of tobacco and nicotine products, with power to prescribe a higher rate

by regulation. The amendment should also require the annual publication of collections and use of the Fund.

Justification: Leaving the contribution entirely open-ended makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure. Public reporting is also necessary so the Fund is visibly tied to health protection rather than being treated as a negotiable levy.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

579. **Amend Clause 7, section 7(4) to provide that the Fund shall be used for:**

- research, documentation and dissemination of information on tobacco and nicotine products;
- promoting national cessation and rehabilitation programmes;
- public education, awareness creation and advocacy on the health, economic and environmental harms of tobacco and nicotine products;
- treatment and management of chronic illnesses caused by tobacco use, including cancers, cardiovascular diseases and chronic respiratory diseases;
- supporting community-based tobacco-control programmes implemented by youth groups, faith-based and civil society organisations and NGOs; and
- any other matter incidental to those purposes.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

580. **The memorandum further proposes inserting a new section 7(4A) providing that:** "Not less than fifteen per cent (15%) of the annual disbursements from the Fund shall be allocated to Kenyan civil society organisations and non-governmental organisations for tobacco control programs, public education, and advocacy."

Justification: The current Act and the Bill as drafted do not explicitly fund public awareness, CSO-led community programs, or treatment of tobacco-related diseases. This leaves major gaps: (1) Counties and civil society have enforcement and education roles but no dedicated funding; (2) Treatment costs are not covered, contradicting the right to health (Constitution Article 43); (3) Without a minimum CSO allocation, grassroots advocacy and community monitoring remain under-resourced. The proposed amendments align with WHO FCTC

Article 12 (education, communication, training) and Article 5.3 (protecting policies from industry interference by enabling independent civil society monitoring).

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

581. **Amend Clause 26 by inserting a new section 53(2)(f)** authorising regulations to prescribe the criteria, application procedure, vetting process, reporting obligations and disbursement mechanisms for funding NGOs and CSOs engaged in tobacco control. The regulations should include requirements for accountability, audit and geographic equity.

Justification: Without explicit regulatory authority, the Fund risks becoming inaccessible to smaller or county-based CSOs. A clear regulatory framework ensures transparency, prevents political capture, and enables even the 15% allocation to be operationalised. This also satisfies Public Finance Management (PFM) Act requirements for fair, competitive, and accountable disbursement of public funds.

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

582. **Amend Clause 10** to retain and strengthen the clause by requiring tobacco taxes to move to at least 75 per cent of the retail price, with annual adjustment for inflation and income growth. The amendment should also expressly earmark a defined share of the revenue for tobacco control, cessation and NCD treatment.

Justification: Taxation is the single most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats the highest standard as taxes exceeding 75% of price and emphasises the importance of maintaining affordability pressure over time. If taxes are not indexed to both inflation and income growth, products can become cheaper in real terms and youth access rises. Revenue earmarking also answers an implementation problem: strong laws fail when enforcement, cessation and surveillance remain unfunded.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the matter on rates applicable may only be addressed through the relevant tax laws. The Committee noted that the amendment requires periodic review of tax and price policies by the Cabinet Secretary for the National Treasury, adjustment for inflation, prevention of illicit trade, and allocation of part of the revenue to the prevention and control of non-communicable diseases.

583. **Amend Clause 12, new section 14A** to prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. Alternatively, if Parliament retains them, permit only: reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets and a nicotine cap of not more than 10 mg/mL.

Justification: The present text normalizes market entry for an addictive product class whose public-health risks remain substantial. WHO states plainly that e-cigarettes are harmful, are not safe, expose bystanders to harmful aerosol, and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU 20 mg/mL / 10 mL / 2 mL framework is a minimum regulatory floor, not a best-practice ceiling. Several developed jurisdictions have moved further by restricting flavours, channels of sale or device types, and both the United Kingdom and Belgium have now prohibited disposable vapes. Kenya should not lock a permissive baseline into primary legislation.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

584. **Amend Clause 12, new section 14B** to prohibit non-therapeutic nicotine pouches. Alternatively, if they are retained, regulate them as tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the maximum nicotine content to not more than 4 mg per pouch. The memorandum further proposes replacing section 14B with: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person contravening the provision would commit an offence and be liable on conviction to a fine not exceeding one million shillings, imprisonment for a term not exceeding two years, or both.

Justification: Nicotine pouches are designed for discreet use, are easy to conceal, and are marketed in flavours and formats that strongly appeal to adolescents and young adults. High-dose pouches accelerate dependence and create a misleading image of a cleaner, lower-risk product even though the addiction risk remains substantial. Research already shows that a sizeable minority of young adults are willing to try nicotine pouches and that advertising exposure and favourable perceptions are material drivers of use. If Parliament does not prohibit them, it should at minimum refuse a 20 mg cap and regulate them as strictly as other nicotine products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

585. **Amend Clause 12, new sections 14C–14I**, to retain and strengthen the provisions by requiring: a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval or refusal and a clear appeal and recall process.

Justification: This is one of the Bill's strongest architecture provisions and should be defended. However, a product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and legal compliance before market entry and throughout the product's life cycle. A public register supports consumer protection, customs enforcement and county licensing. Independent testing is especially important for novel nicotine products because industry-submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

586. **Amend Clause 12, new section 14J,** to retain and strengthen the prohibition by expressly covering menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation across all tobacco and nicotine products.

Justification: This clause should be defended as a core youth-protection measure. WHO and the FCTC Secretariat now explicitly call for urgent action against flavours and other design features that increase attractiveness and palatability. Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. A comprehensive ban must therefore be sensory-effect based, not merely name-based. The Netherlands' move to tobacco-flavour-only e-liquids and Belgium's move toward tighter vape controls show that developed jurisdictions are moving in the same direction, not away from it.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

587. **Amend Clause 13, section 15,** to retain the prohibition on youth-appealing designs and increase the minimum sales buffer from 100 metres to at least 300 metres around schools, childcare facilities, playgrounds and other premises primarily serving children.

Amend Clause 13, sections 1, 3, 5(a)(b) and 5A to replace "eighteen" with "twenty-one" in the specified provisions.

Justification: The design ban is sound and should be preserved. The distance buffer, however, is too low for practical enforcement in dense urban settings and does not adequately reduce

the retail visibility and availability of tobacco and nicotine products around children. Kenya already recognises a 300-metre public-health buffer in alcohol-control law for learning institutions. Using the same benchmark here improves coherence in child-protection legislation and gives administrators and courts a familiar standard. A wider buffer also reduces retailer clustering and the routine normalisation of nicotine products near schools.

Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

588. **Amend Clause 16, new section 19A** to retain the prohibition on online sale or offer for sale of tobacco products, nicotine pouches and ENDS, but impose duties on platform operators, payment intermediaries and delivery services to:

i. remove or block unlawful listings;
ii. preserve transaction data; and
iii. cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: A simple ban is necessary but not sufficient. Online tobacco and vape commerce often shifts to social media, messaging channels, cross-border websites and intermediary platforms. Without platform obligations, traceability and takedown mechanisms, enforcement becomes reactive and uneven. Comparative practice shows that governments now treat online sales and cross-border e-commerce as a core regulatory frontier. Belgium publicly reports aggressive enforcement against unlawful online vape sales, while the Netherlands prohibits cross-border online sales of tobacco and e-cigarette products. Kenya should legislate the enforcement chain, not just the prohibited act.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

589. **Amend Clause 17 and 19** to retain the dual public-health gatekeeping model but require: a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and mandatory publication of suspensions and revocations.

Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks. This is also consistent with the supply-chain control logic of the Illicit Trade Protocol, which treats licensing, record-keeping and traceability as core anti-diversion tools.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

590. **Amend Clauses 18 and 23** to defend the 75 per cent warning requirement and plain-packaging power. Extend large pictorial warnings and standardised packaging to ENDS and nicotine pouches. The amendments should also require: a quitline/cessation message, a poison warning for liquid nicotine and prohibition of branded displays or menu-board-style counter signage at retail outlets.

Justification: This is a major public-health gain and should not be diluted in the National Assembly. WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognises plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising. Evidence reviews, including Cochrane, support the conclusion that standardised packaging reduces appeal and may contribute to lower smoking prevalence. Novel products should not be allowed to preserve branding intensity simply because they sit outside traditional cigarette packaging norms.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

591. **Amend Clauses 20 and 21** to expand the provisions into a full-spectrum tobacco advertising, promotion and sponsorship (TAPS) ban covering: digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions, and point-of-sale visibility.

Justification: This should be treated as a modern Article 13 clause, not a narrow social-media amendment. The industry now markets through ecosystems: creators, event culture, sponsorship, discounts, product seeding, hashtag campaigns and indirect brand extension. A partial digital ban will be outpaced almost immediately. Article 13 guidance favours a comprehensive ban because partial bans merely displace promotion from one channel to another. WHO's 2025 campaign also focused directly on how flavours, design and marketing tactics are used to addict youth and normalise nicotine use.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

592. **Amend Clauses 22 and 24** to delete the designated-smoking-area exception entirely and require 100 per cent smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues. The amendment should also establish specified outdoor smoke/vape-free perimeters around: schools, hospitals, playgrounds, and public-building entrances.

Justification: This is the clearest place where the Bill still falls below best practice. The Article 8 guidelines are categorical: there is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Once ENDS and heated products are included, retaining designated rooms also creates an enforcement fiction because aerosol drift, leakage and worker exposure remain. Kenya should move to a clean 100% rule. The Netherlands has explicitly rejected smoking rooms as facilitating smoking and normalising the behaviour.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

593. **Amend Clause 19, new section 21B** to retain and strengthen the provision by: expressly banning disposable vapes as a product class, imposing take-back and producer-responsibility obligations for batteries and device waste and authorising seizure and destruction of non-compliant stock.

Justification: This is a strong environmental-health clause and should be defended. Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste. Comparative developed-country practice is now moving in this direction: the United Kingdom bans single-use vapes and Belgium has totally banned the sale of disposable electronic cigarettes. Kenya should make the environmental rationale explicit and link it to public-health enforcement powers so the clause is not reduced to a symbolic waste measure.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

594. **Amend the New Clause, section 21C** to insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products. A person contravening the provision would be liable to a penalty of up to Ksh5 million, imprisonment for up to three years, or both.

Justification: This complements the proposed definitional changes on shisha.

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

595. **Amend Clause 22** by deleting the designated-smoking-area model entirely and move to 100 per cent smoke-free indoor and enclosed public places. Alternatively, if designated smoking

areas are retained, remove aircraft from any place where a designated smoking area may be allowed.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

596. **Amend Clause 24, section 35(2)(b)(iii)** to include: if designated smoking areas are retained, require not only certification by a qualified engineer, but also approval by the county public health officer, including inspection and approval fees.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

597. **Amend Clause 26, section 53,** to further expand section 53 to authorise regulations on: track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardised packaging rules; and an express prohibition on delegating State regulatory functions to the tobacco industry.

Justification: Section 53 should be drafted as the Bill's enforcement engine. The clearer Parliament authorises disclosure, traceability, recall, seizure, packaging, and supply-chain controls, the harder it will be for later regulations to be challenged as ultra vires. The Illicit Trade Protocol is especially important here: it treats licensing, record-keeping, due diligence, tracking and tracing as state functions for securing the supply chain. An express non-delegation clause is prudent because industry-controlled traceability or compliance systems create exactly the conflict Article 5.3 seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

49) Africa Cancer Foundation submitted as follows:

598. **Amend the title to read:** "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

599. Amend Clause 3, section 2, Clause 12 proposed section 14B, and consequential references in Clauses 16 and 23 to retain and refine the definition of "nicotine pouch" in section 2 for enforcement clarity, but delete proposed section 14B in its current form and replace it with an express prohibition: "No person shall manufacture, import, sell, distribute, advertise,

promote or use a nicotine pouch." Further, delete all consequential references that presuppose lawful sale or display of nicotine pouches, including in online sales and retail warning provisions, save only where reference is necessary for seizure, enforcement or offence provisions.

Justification: A prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to conceal, easy to use in smoke-free spaces, and often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified nicotine pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk. WHO has also called for urgent action to ban flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and entrench dependence, especially among children and young people. Retaining a clear definition while prohibiting the product closes loopholes, supports seizure and prosecution, and prevents the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

600. Amend Clause 3 to retain the expanded definition, but expressly add "constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use", and require disclosure of device-component emissions.

Justification: This should be widened beyond ingredients physically present in the product at the point of sale. For novel nicotine products, major risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the bottled liquid or pouch contents matter, even where the actual inhaled aerosol contains additional toxicants. The better approach is to regulate both product contents and product disclosures, including emissions and contaminants released in normal use. That aligns the Bill with modern product-regulation practice and makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

601. **Amend Clause 3 to reject the replacement definition. Retain the existing broad definition and add a new limb:** "promotion of a tobacco product by means of its brand characteristics."

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

602. Amend Clause 3 to insert new definitions for "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha", and "shisha smoking".
Justification: Intended to close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

603. Amend Clause 3 to retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Justification: The definition should close the common loophole under which sellers market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. WHO states that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

604. Amend Clause 3 to retain and strengthen by defining nicotine analogues functionally, and by extending "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.
Justification: Industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for bans on ingredients that increase attractiveness and palatability. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

605. Amend Clause 5 to remove the KNCCI/business representative seat. Add mandatory public disclosure of interests, minutes, agendas and all meetings with industry; prohibit gifts, partnerships and non-essential interactions; and require recusals backed by sanctions.
Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in

weakening demand-reduction measures. Article 5.3 requires protection of public health policies from the commercial and other vested interests of the tobacco industry. The current conflict-of-interest wording is useful but insufficient if the Committee still institutionalises an industry-adjacent nomination route. The safer model is to remove the seat altogether and legislate transparency, limited interactions and enforceable recusals. The Supreme Court has already upheld strong tobacco-control regulations, including limits on interactions between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

606. **Amend Clause 6 to insert a statutory floor:** not less than 2% of the ex-factory value or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation. Require annual publication of collections and use of the Fund.

Justification: Leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure. Public reporting is also necessary so the Fund is visibly tied to health protection rather than being treated as a negotiable levy.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

607. Amend section 7(4) to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support.

Justification: As with regard to disbursement of the fund, the Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement. The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards. At the same time, the Fund remains subject to the broader public finance framework.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

608. Amend Clause 10 to retain and strengthen by requiring that tobacco taxes move to at least 75% of retail price, with annual adjustment for inflation and income growth; expressly earmark a defined share for tobacco control, cessation and NCD treatment.

Justification: Taxation is the single most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats the highest standard as taxes exceeding 75% of price and emphasises the importance of maintaining affordability pressure over time. If taxes are not indexed to both inflation and income growth, products can become cheaper in real terms and youth access rises. Revenue earmarking also answers an implementation problem: strong laws fail when enforcement, cessation and surveillance remain unfunded.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

609. **Amend Clause 12, new section 14A to adopt a public-health-maximal position:** prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, if Parliament retains them, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets, and a lower nicotine cap of not more than 10 mg/mL.

Justification: The present text normalises market entry for an addictive product class whose public-health risks remain substantial. WHO states plainly that e-cigarettes are harmful, are not safe, expose bystanders to harmful aerosol, and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU 20 mg/mL / 10 mL / 2 mL framework is a minimum regulatory floor, not a best-practice ceiling. Several developed jurisdictions have moved further by restricting flavours, channels of sale or device types, and both the United Kingdom and Belgium have now prohibited disposable vapes. Kenya should not lock a permissive baseline into primary legislation.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

610. Amend Clause 12 new section 14B to prohibit non-therapeutic nicotine pouches. In the alternative, regulate them exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the maximum nicotine content to not more

than 4 mg per pouch. Replace current 14(B) with the following: No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch. A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Justification: Nicotine pouches are designed for discreet use, are easy to conceal, and are marketed in flavours and formats that strongly appeal to adolescents and young adults. High-dose pouches accelerate dependence and create a misleading image of a cleaner, lower-risk product even though the addiction risk remains substantial. Research already shows that a sizeable minority of young adults are willing to try nicotine pouches and that advertising exposure and favourable perceptions are material drivers of use. If Parliament does not prohibit them, it should at minimum refuse a 20 mg cap and regulate them as strictly as other nicotine products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

611. Amend Clause 12, new sections 14C–14I to retain and strengthen by requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval/refusal, and a clear appeal and recall process.

Justification: This is one of the Bill's strongest architecture provisions and should be defended. However, a product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and legal compliance before market entry and throughout the product's life cycle. A public register supports consumer protection, customs enforcement and county licensing. Independent testing is especially important for novel nicotine products because industry-submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

612. **Clause 12, new section 14J:** Retain and strengthen by expressly covering menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation across all tobacco and nicotine products.

Justification: This clause should be defended as a core youth-protection measure. WHO and the FCTC Secretariat now explicitly call for urgent action against flavours and other design features that increase attractiveness and palatability. Partial flavour bans are easy to evade

through cooling additives, ambiguous descriptors, accessories and device design. A comprehensive approach is necessary to prevent circumvention and protect young people.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

50) Foresight Advisory Africa submitted as follows:

613. **Amend the title to read:** "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

614. **Clause 3 (section 2 definition of "nicotine pouch"); Clause 12 (proposed section 14B); and consequential references in Clauses 16 and 23 and any other clause that regulates, permits or assumes lawful sale of nicotine pouches**: Retain and refine the definition of "nicotine pouch" in section 2 for enforcement clarity, but delete proposed section 14B in its current form and replace it with an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." Further, delete all consequential references that presuppose lawful sale or display of nicotine pouches, including in online sales and retail warning provisions, save only where reference is necessary for seizure, enforcement or offence provisions.

Justification: A prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to conceal, easy to use in smoke-free spaces, and often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified nicotine pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk. WHO has also called for urgent action to ban flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and entrench dependence, especially among children and young people. Retaining a clear definition while prohibiting the product closes loopholes, supports seizure and prosecution, and prevents the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

615. **Clause 3 (definitions: "ingredients")**: Retain the expanded definition, but expressly add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use", and require disclosure of device-component emissions.
Justification: This should be widened beyond ingredients physically present in the product at the point of sale. For novel nicotine products, major risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the bottled liquid or pouch contents matter, even where the actual inhaled aerosol contains additional toxicants. The better approach is to regulate both product contents and product disclosures, including emissions and contaminants released in normal use. That aligns the Bill with modern product-regulation practice and makes later standards on testing, approvals and recalls legally safer.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

616. **Clause 3 definition of "advertisement"**: Reject the replacement definition. Retain the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics."
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

617. **Clause 3 new definitions**: Insert new definitions for "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha", and "shisha smoking".
Justification: Intended to close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

618. **Clause 3 (definitions: "smoking")**: Retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Justification: The definition should close the common loophole under which sellers market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. WHO states that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or

not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

619. **Clause 3:** Retain and strengthen by defining nicotine analogues functionally, and by extending "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.
Justification: Industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for bans on ingredients that increase attractiveness and palatability. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

620. **Clause 5:** Remove the KNCCI/business representative seat. Add mandatory public disclosure of interests, minutes, agendas and all meetings with industry; prohibit gifts, partnerships and non-essential interactions; and require recusals backed by sanctions.
Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures. Article 5.3 requires protection of public health policies from the commercial and other vested interests of the tobacco industry. The current conflict-of-interest wording is useful but insufficient if the Committee still institutionalizes an industry-adjacent nomination route. The safer model is to remove the seat altogether and legislate transparency, limited interactions and enforceable recusals. The Supreme Court has already upheld strong tobacco-control regulations, including limits on interactions between public authorities and the tobacco industry.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

621. **Clause 7**: Insert a statutory floor: not less than 2% of the ex-factory value or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation. Require annual publication of collections and use of the Fund.
Justification: Leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was

unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure. Public reporting is also necessary so the Fund is visibly tied to health protection rather than being treated as a negotiable levy.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

622. **Clause 10**: Retain and strengthen by requiring that tobacco taxes move to at least 75% of retail price, with annual adjustment for inflation and income growth; expressly earmark a defined share for tobacco control, cessation and NCD treatment.

Justification: Taxation is the single most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats the highest standard as taxes exceeding 75% of price and emphasizes the importance of maintaining affordability pressure over time. If taxes are not indexed to both inflation and income growth, products can become cheaper in real terms and youth access rises. Revenue earmarking also answers an implementation problem: strong laws fail when enforcement, cessation and surveillance remain unfunded.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

623. **Clause 12, new section 14A:** Adopt a public-health-maximal position: prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, if Parliament retains them, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets, and a lower nicotine cap of not more than 10 mg/mL.

Justification: The present text normalizes market entry for an addictive product class whose public-health risks remain substantial. WHO states plainly that e-cigarettes are harmful, are not safe, expose bystanders to harmful aerosol, and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU 20 mg/mL / 10 mL / 2 mL framework is a minimum regulatory floor, not a best-practice ceiling. Several developed jurisdictions have moved further by restricting flavours, channels of sale or device types, and both the United Kingdom and Belgium have now prohibited disposable vapes. Kenya should not lock a permissive baseline into primary legislation.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which

electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

624. **Clause 12, new section 14B:** Prohibit non-therapeutic nicotine pouches. In the alternative, regulate them exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the maximum nicotine content to not more than 4 mg per pouch. Replace current 14(B) with the following: No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch. A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Justification: Nicotine pouches are designed for discreet use, are easy to conceal, and are marketed in flavours and formats that strongly appeal to adolescents and young adults. High-dose pouches accelerate dependence and create a misleading image of a cleaner, lower-risk product even though the addiction risk remains substantial. Research already shows that a sizeable minority of young adults are willing to try nicotine pouches and that advertising exposure and favourable perceptions are material drivers of use. If Parliament does not prohibit them, it should at minimum refuse a 20 mg cap and regulate them as strictly as other nicotine products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

625. **Clause 12, new sections 14C–14I:** Retain and strengthen by requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval/refusal, and a clear appeal and recall process.

Justification: This is one of the Bill's strongest architecture provisions and should be defended. However, a product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and legal compliance before market entry and throughout the product's life cycle. A public register supports consumer protection, customs enforcement and county licensing. Independent testing is especially important for novel nicotine products because industry-submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and

banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

626. **Clause 12, new section 14J:** Retain and strengthen by expressly covering menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation across all tobacco and nicotine products.
Justification: This clause should be defended as a core youth-protection measure. WHO and the FCTC Secretariat now explicitly call for urgent action against flavours and other design features that increase attractiveness and palatability. Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. A comprehensive ban must therefore be sensory-effect based, not merely name based. The Netherlands' move to tobacco-flavour-only e-liquids and Belgium's move toward tighter vape controls show that developed jurisdictions are moving in the same direction, not away from it.
Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

627. **Clause 13, section 15:** Retain the design prohibition and increase the minimum sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children.
Justification: The design ban is sound and should be preserved. The distance buffer, however, is too low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children. Kenya already recognizes a 300-metre public-health buffer in alcohol-control law for learning institutions. Using the same benchmark here improves coherence in child-protection legislation and gives administrators and courts a familiar standard. A wider buffer also reduces retailer clustering and the routine normalization of nicotine products near schools.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

628. Amend section 15(1), (3), (5)(a), (5)(b), and (5A) by replacing "eighteen" with "twenty-one".
Justification: The adolescent brain continues developing until the age of 25. Increasing the age of access to 21 provides a further 3 years of protection for adolescents from the harms of nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of

the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

629. **Clause 16, new section 19A:** Retain and strengthen by imposing duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: A simple ban is necessary but not sufficient. Online tobacco and vape commerce often shifts to social media, messaging channels, cross-border websites and intermediary platforms. Without platform obligations, traceability and takedown mechanisms, enforcement becomes reactive and uneven. Comparative practice shows that governments now treat online sales and cross-border e-commerce as a core regulatory frontier. Belgium publicly reports aggressive enforcement against unlawful online vape sales, while the Netherlands prohibits cross-border online sales of tobacco and e-cigarette products. Kenya should legislate the enforcement chain, not just the prohibited act.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

630. **Clauses 17 and 19:** Retain the dual public-health gatekeeping model, but require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.
Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks. This is also consistent with the supply-chain control logic of the Illicit Trade Protocol, which treats licensing, record-keeping and traceability as core anti-diversion tools.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

631. **Clause 18 and Clause 23:** Defend the 75% warning rule and plain-packaging power. Extend large pictorial warnings and standardised packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.
Justification: This is a major public-health gain and should not be diluted in the National Assembly. WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognises plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising. Evidence reviews, including Cochrane, support the conclusion that standardised packaging reduces appeal and may contribute to lower smoking

prevalence. Novel products should not be allowed to preserve branding intensity simply because they sit outside traditional cigarette packaging norms.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

51) Resolutions Recovery Centre submitted as follows:

632. **Amend title to read:** "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

633. **Clause 3 (section 2 definition of "nicotine pouch"); Clause 12 (proposed section 14B); and consequential references in Clauses 16 and 23 and any other clause that regulates, permits or assumes lawful sale of nicotine pouches**: Retain and refine the definition of "nicotine pouch" in section 2 for enforcement clarity, but delete proposed section 14B in its current form and replace it with an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." Further, delete all consequential references that presuppose lawful sale or display of nicotine pouches, including in online sales and retail warning provisions, save only where reference is necessary for seizure, enforcement or offence provisions.

Justification: A prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to conceal, easy to use in smoke-free spaces, and often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified nicotine pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk. WHO has also called for urgent action to ban flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and entrench dependence, especially among children and young people. Retaining a clear definition while prohibiting the product closes loopholes, supports seizure and prosecution, and prevents the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

634. **Clause 3 (definitions: "ingredients")**: Retain the expanded definition, but expressly add "constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use", and require disclosure of device-component emissions.
Justification: This should be widened beyond ingredients physically present in the product at the point of sale. For novel nicotine products, major risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the bottled liquid or pouch contents matter, even where the actual inhaled aerosol contains additional toxicants. The better approach is to regulate both product contents and product disclosures, including emissions and contaminants released in normal use. That aligns the Bill with modern product-regulation practice and makes later standards on testing, approvals and recalls legally safer.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

635. **Clause 3 definition of "advertisement"**: Reject the replacement definition. Retain the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics.
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

636. **Clause 3 new definitions**: Insert new definitions for "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha", and "shisha smoking".
Justification: Intended to close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

637. **Clause 3 (definitions: "smoking")**: Retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Justification: The definition should close the common loophole under which sellers market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. WHO states that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or

not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

638. **Clause 3 (definitions: "tobacco product", "characterising flavour")**: Retain and strengthen by defining nicotine analogues functionally, and by extending "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.
Justification: Industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for bans on ingredients that increase attractiveness and palatability. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

639. **Clause 5 (Tobacco Control Advisory Committee)**: Delete section 5A(1)(g) entirely. Also amend section 5A(2) to clarify that remaining members are appointed by Cabinet Secretary.
Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures. Article 5.3 requires protection of public health policies from the commercial and other vested interests of the tobacco industry. The current conflict-of-interest wording is useful but insufficient if the Committee still institutionalises an industry-adjacent nomination route. The safer model is to remove the seat altogether and legislate transparency, limited interactions and enforceable recusals. The Supreme Court has already upheld strong tobacco-control regulations, including limits on interactions between public authorities and the tobacco industry.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

640. **Clause 7 (solatium compensatory contribution)**: Insert a statutory floor: not less than 2% of the ex-factory value or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation. Require annual publication of collections and use of the Fund.
Justification: Leaving the contribution entirely open-ended makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and

the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure. Public reporting is also necessary so the Fund is visibly tied to health protection rather than being treated as a negotiable levy.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

641. **Amend section 7(4) to read:** (4) The Fund shall be used for meeting the capital and current expenditure relating to— (a) research, documentation and dissemination of information on tobacco and nicotine products; (b) promoting national cessation and rehabilitation programs; (c) public education, awareness creation, and advocacy on the health, economic, and environmental harms of tobacco and nicotine products; (d) treatment and management of chronic illnesses caused by tobacco use, including cancers, cardiovascular diseases, and chronic respiratory diseases; (e) supporting community-based tobacco control programs implemented by youth groups, faith-based and civil society organizations and non-governmental organizations; (f) any other matter incidental to the matters stated in paragraphs (a) to (e). Insert new section 7(4A): Not less than fifteen per cent (15%) of the annual disbursements from the Fund shall be allocated to Kenyan civil society organisations and non-governmental organisations for tobacco control programs, public education, and advocacy.

Justification: The current Act and the Bill as drafted do not explicitly fund public awareness, CSO-led community programs, or treatment of tobacco-related diseases. This leaves major gaps: (1) Counties and civil society have enforcement and education roles but no dedicated funding; (2) Treatment costs are not covered, contradicting the right to health (Constitution Article 43); (3) Without a minimum CSO allocation, grassroots advocacy and community monitoring remain under-resourced. The proposed amendments align with WHO FCTC Article 12 (education, communication, training) and Article 5.3 (protecting policies from industry interference by enabling independent civil society monitoring).

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

642. **Insert new section 53(2)(f):** prescribe the criteria, application procedure, vetting process, reporting obligations, and disbursement mechanisms for funding to non-governmental organisations and civil society organisations engaged in tobacco control, including requirements for accountability, audit, and geographic equity. **Justification:** Without explicit regulatory authority, the Fund risks becoming inaccessible to smaller or county-based CSOs. A clear regulatory framework ensures transparency, prevents political capture, and enables

even the 15% allocation to be operationalised. This also satisfies Public Finance Management (PFM) Act requirements for fair, competitive, and accountable disbursement of public funds.
Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

643. Amend Clause 10 to retain and strengthen by requiring that tobacco taxes move to at least 75% of retail price, with annual adjustment for inflation and income growth; expressly earmark a defined share for tobacco control, cessation and NCD treatment.
Justification: Taxation is the single most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats the highest standard as taxes exceeding 75% of price and emphasises the importance of maintaining affordability pressure over time. If taxes are not indexed to both inflation and income growth, products can become cheaper in real terms and youth access rises. Revenue earmarking also answers an implementation problem: strong laws fail when enforcement, cessation and surveillance remain unfunded.
Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

644. **Clause 12 (new section 14A: ENDS/e-cigarettes)**: Adopt a public-health-maximal position: prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, if Parliament retains them, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets, and a lower nicotine cap of not more than 10 mg/mL.
Justification: The present text normalises market entry for an addictive product class whose public-health risks remain substantial. WHO states plainly that e-cigarettes are harmful, are not safe, expose bystanders to harmful aerosol, and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU 20 mg/mL / 10 mL / 2 mL framework is a minimum regulatory floor, not a best-practice ceiling. Several developed jurisdictions have moved further by restricting flavours, channels of sale or device types, and both the United Kingdom and Belgium have now prohibited disposable vapes. Kenya should not lock a permissive baseline into primary legislation.
Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration,

additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

645. **Clause 12 (new section 14B)**: Prohibit non-therapeutic nicotine pouches. In the alternative, regulate them exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the maximum nicotine content to not more than 4 mg per pouch. Replace current 14(B) with the following: No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch. A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Justification: Nicotine pouches are designed for discreet use, are easy to conceal, and are marketed in flavours and formats that strongly appeal to adolescents and young adults. High-dose pouches accelerate dependence and create a misleading image of a cleaner, lower-risk product even though the addiction risk remains substantial. Research already shows that a sizeable minority of young adults are willing to try nicotine pouches and that advertising exposure and favourable perceptions are material drivers of use. If Parliament does not prohibit them, it should at minimum refuse a 20 mg cap and regulate them as strictly as other nicotine products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

646. **Clause 12 (new sections 14C–14I)**: Retain and strengthen by requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval/refusal, and a clear appeal and recall process.

Justification: This is one of the Bill's strongest architecture provisions and should be defended. However, a product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and legal compliance before market entry and throughout the product's life cycle. A public register supports consumer protection, customs enforcement and county licensing. Independent testing is especially important for novel nicotine products because industry-submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

52) The Retail Trade Association of Kenya (RETRAK), in a separate memorandum, submitted as follows:

647. **Clause 12 (proposed sections 14A and 14B, electronic cigarettes and nicotine pouches):** Restructure sections 14A and 14B to differentiate clearly between combustible cigarettes and non-combustible nicotine products, and to enable responsible adult access to nicotine pouches and electronic cigarettes from legitimate businesses and suppliers.

Justification: RETRAK stated that its members receive growing inquiries from adult smokers who seek nicotine pouches and electronic cigarettes to reduce or quit smoking. Unclear and restrictive rules have made supply inconsistent, and some consumers have reverted to cigarettes. RETRAK argued that regulating non-combustible nicotine products in the same way as cigarettes is unlikely to improve public health outcomes, and that regulatory uncertainty hurts small and medium-sized retailers.

Committee Resolution: The Committee did not adopt the proposal for a separate risk-based regulatory category. The Bill already provides for pre-market approval and testing of each product (sections 14C–14I), in which the risk of a product is assessed, and WHO's position is that e-cigarettes and nicotine pouches are harmful and not safe, particularly for young people.

648. **Clause 12 (proposed section 14J(1)(f), characterising flavours):** Review the paragraph so that it prohibits only flavours that are expressly or uniquely appealing to persons under 18 years, and retains a regulated space in which adult consumers can access adult-appropriate flavours. Pair adult access with strict penalties, robust enforcement against sales to minors and clear compliance duties for retailers.

Justification: RETRAK stated that the greatest risk Kenya faces is illicit, untaxed and unregulated tobacco, which it estimated at more than half of the market. Excessive flavour restrictions would push consumers to illicit products and unsafe home-mixing, or back to cigarettes. RETRAK argued that adult flavours help smokers move to smokeless alternatives and called for enforcement and administrative measures in place of new legislative restrictions.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

649. **Clause 13 (new section 15(5A), 100-metre restriction):** Delete the proposed paragraph (5A) in its entirety.

Justification: Experience from the alcohol sector shows that distance-based restrictions are hard to apply because boundary measurement is contested, mapping is uneven and enforcement depends on discretion. In dense urban and peri-urban areas, a 100-metre radius would amount to a ban on lawful retail in many communities, leave room for illicit operators, and invite harassment and selective enforcement. RETRAK supported protecting minors but

stated that the Act already restricts access by under-age persons and that existing provisions need consistent enforcement.

Committee Resolution: The Committee did not adopt the proposal to delete section 15(5A). Distance restrictions complement, and do not replace, controls on sale to minors, and they reduce the visibility of products near children.

650. **Clause 17 (new section 20A, county licensing of dealers):** Delete the proposed section 20A in its entirety.

Justification: A tobacco-specific licence departs from the single business permit regime that all retailers use. It would raise compliance costs, hit small and medium-sized retailers hardest, lead to business closures and duplicate existing permits and inspections. RETRAK stated that retailers already face harassment, repeated inspections and arbitrary enforcement. The Act already contains enough enforcement powers and penalties to prevent sales to under-age persons.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation.

651. **Clause 18 (new section 21(2A)(b), plain packaging):** Delete the proposed paragraph (2A)(b) in its entirety.

Justification: Plain packaging would remove the visual identifiers that help retailers, enforcement agencies and consumers tell legitimate products from illicit ones. RETRAK argued that this would make enforcement harder, speed up illicit trade and undermine public health objectives and tax compliance. Government should prioritise enforcement of existing packaging and labelling laws.

Committee Resolution: The Committee did not adopt the proposal. The 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, are retained and apply to electronic nicotine delivery systems and nicotine pouches as provided in the Bill.

652. **Clause 19 (new section 21A, national registration):** Amend the proposed section 21A to limit registration with the Ministry of Health to manufacturers and importers only.

Justification: Extending registration to retailers is onerous, impractical and unwarranted. The Ministry already registers manufacturers and importers administratively as part of the requirements for excise licences.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

653. **Clause 19 (new section 21B, single-use plastics):** Delete the proposed section 21B in its entirety.

Justification: A sector-specific ban duplicates the Environmental Management and Co-ordination Act (EMCA) and its regulations, including the Extended Producer Responsibility Regulations, 2021 and the Management and Control of Plastic Packaging Materials Regulations, 2024. These already cover tobacco packaging through registration with NEMA, collection and recycling schemes and traceability duties. A categorical ban would fragment environmental regulation, disrupt ongoing engagement between NEMA and retailers, and invite constitutional challenge on proportionality.

Committee Resolution: The Committee did not adopt the proposal to delete section 21B. Disposable nicotine devices and packaging made with single-use plastics pose an environmental and public-health hazard particular to these products. The Committee resolved that implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024.

53) Faraja Cancer Support Trust submitted as follows:

654. **Clause 3 (definition of "nicotine pouch"):** Retain and refine the definition of "nicotine pouch" for enforcement clarity.

Justification: Faraja proposed a prohibition of nicotine pouches under Clause 12. A clear definition closes loopholes and supports seizure, enforcement and prosecution.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

655. **Clause 3 (definition of "ingredients"):** Retain the expanded definition and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.

Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

656. **Clause 3 (definition of "advertisement"):** Reject the shorter replacement definition. Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".

Clause 3 (definition of "smoking"): Retain the revised definition and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. The World Health Organization (WHO) reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

657. **Clause 3 (definitions of "tobacco product" and "characterising flavour"):** Retain both definitions. Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

658. **Clause 3 (new definitions):** Insert the following new definitions:

4) "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,
5) "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,
6) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,
7) "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of a pouch, conical, cylindrical or any other type of package,
8) "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses,

honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and

9) "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: The new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

659. **Clause 5 (Tobacco Control Advisory Committee):** Amend the proposed section 5A to:

10) remove the seat for the Kenya National Chamber of Commerce and Industry nominee,

11) require public disclosure of interests, minutes, agendas and all meetings with industry, prohibit gifts, partnerships and non-essential interactions, and require recusals backed by sanctions,

12) replace the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and

13) require the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. Faraja noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

660. **Clause 7 (Tobacco Control Fund):** Amend section 7 of the principal Act by:

14) setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,

15) amending section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support, and

16) inserting a new subsection empowering the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumbering subsection (5) as subsection (6).

Justification: An open-ended contribution invites lobbying and leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme

Court rejected the claim that the solatium contribution was unconstitutional. Faraja stated that enforcement of tobacco control is a devolved function, yet the Ministry of Health does not channel Fund money to county enforcement programmes. Research institutions and civil society deliver research and public awareness more effectively. The Cabinet Secretary for Health, who holds regulatory authority under the Act, should prescribe disbursement criteria, eligible recipients and reporting duties within the public finance framework.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

661. **Clause 10 (tax and price policies):** Retain the clause and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. Faraja cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

662. **Clause 12 (proposed section 14A, electronic nicotine delivery systems):** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable

devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. National data shows that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

663. **Clause 12 (proposed section 14B, nicotine pouches):** Delete section 14B and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. Delete consequential references in Clauses 16 and 23 that presuppose lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.

Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. Faraja cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern shows deliberate targeting of young people, whose developing brains are especially vulnerable to nicotine. Use among adolescents stands at 0.22 percent, and a ban would keep it low.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

664. **Clause 12 (proposed sections 14C to 14I, product approval):** Retain the pre-market approval regime and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

665. **Clause 12 (proposed section 14J, additives and characterising flavours):** Retain the section and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.

Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. The Netherlands has moved to tobacco-flavour-only e-liquids.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

666. **Clause 13 (section 15, youth-appealing designs and sales buffer):** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".

Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

667. **Clause 16 (proposed section 19A, online sales):** Retain the ban on online sales and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Belgium enforces actively against online vape sales, and the Netherlands bans cross-border online sales.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

668. **Clauses 17 and 19 (county licensing and national registration):** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.
Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

669. **Clauses 18 and 23 (health warnings, plain packaging and retail warnings):** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.
Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews find that standardised packaging reduces appeal.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

670. **Clause 19 (proposed section 21B, single-use plastics):** Retain the section and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

671. **New clause (new section 21C, shisha):** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.
Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

672. **Clauses 20 and 21 (advertising, promotion and sponsorship):** Expand the provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.
Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

673. **Clause 22 (smoke-free places and designated smoking areas):** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor and enclosed public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from the places where they may exist.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict

engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

674. **Clause 24 (section 35(2)(b)(iii), certification of designated smoking areas):** If the Bill retains designated smoking areas, require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

675. **Clause 26 (section 53, regulations):** Expand the regulation-making power to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.
Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

676. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: The amended title reflects the products the Bill regulates.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

54) The Society of Community Health Caregivers (SOCHE) submitted as follows:

677. **Clause 3 (definition of "nicotine pouch"):** Retain and refine the definition of "nicotine pouch" for enforcement clarity.
Justification: SOCHE proposed a prohibition of nicotine pouches under Clause 12. A clear definition closes loopholes and supports seizure, enforcement and prosecution.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

678. **Clause 3 (definition of "ingredients"): Retain the expanded definition and add "constituents, emissions, contaminants and by-products generated during heating,**

aerosolization, storage or use". Require disclosure of emissions from device components.

Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

679. **Clause 3 (definition of "advertisement"): Reject the shorter replacement definition. Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".**

Justification: SOCHE gave no separate justification for this proposal.

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

680. **Clause 3 (definition of "smoking"): Retain the revised definition and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.**

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. The World Health Organization (WHO) reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

681. **Clause 3 (definitions of "tobacco product" and "characterising flavour"):** Retain both definitions. Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

682. **Clause 3 (new definitions): Insert the following new definitions:**

i. "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,

ii. "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,

iii. "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,

iv. "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of a pouch, conical, cylindrical or any other type of package,

v. "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and

vi. "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: The new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

683. **Clause 5 (Tobacco Control Advisory Committee): Amend the proposed section 5A to:**

i. remove the seat for the Kenya National Chamber of Commerce and Industry nominee,

ii. require public disclosure of interests, minutes, agendas and all meetings with industry, prohibit gifts, partnerships and non-essential interactions, and require recusals backed by sanctions,

iii. replace the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and

iv. require the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. SOCHE noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

684. **Clause 7 (Tobacco Control Fund): Amend section 7 of the principal Act by:**

i. setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,

ii. amending section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support, and

iii. inserting a new subsection empowering the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumbering subsection (5) as subsection (6).

Justification: An open-ended contribution invites lobbying and leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. SOCHE stated that enforcement of tobacco control is a devolved function, yet the Ministry of Health does not channel Fund money to county enforcement programmes. Research institutions and civil society deliver research and public awareness more effectively. The Cabinet Secretary for Health, who holds regulatory authority under the Act, should prescribe disbursement criteria, eligible recipients and reporting duties within the public finance framework.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The

Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

685. **Clause 10 (tax and price policies):** Retain the clause and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. SOCHE cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

686. **Clause 12 (proposed section 14A, electronic nicotine delivery systems):** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. National data shows that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

687. **Clause 12 (proposed section 14B, nicotine pouches): Delete section 14B** and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. Delete consequential references in Clauses 16 and 23 that presuppose lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.

Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. SOCHE cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern shows deliberate targeting of young people, whose developing brains are especially vulnerable to nicotine. Use among adolescents stands at 0.22 percent, and a ban would keep it low.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

688. **Clause 12 (proposed sections 14C to 14I, product approval):** Retain the pre-market approval regime and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

689. **Clause 12 (proposed section 14J, additives and characterising flavours):** Retain the section and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.

Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. The Netherlands has moved to tobacco-flavour-only e-liquids.
Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

690. **Clause 13 (section 15, youth-appealing designs and sales buffer):** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".
Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

691. **Clause 16 (proposed section 19A, online sales):** Retain the ban on online sales and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Belgium enforces actively against online vape sales, and the Netherlands bans cross-border online sales.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

692. **Clauses 17 and 19 (county licensing and national registration):** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.
Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

693. **Clauses 18 and 23 (health warnings, plain packaging and retail warnings):** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.
Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews find that standardised packaging reduces appeal.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

694. **Clause 19 (proposed section 21B, single-use plastics):** Retain the section and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

695. **New clause (new section 21C, shisha):** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.
Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A

prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

696. **Clauses 20 and 21 (advertising, promotion and sponsorship):** Expand the provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.
Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

697. **Clause 22 (smoke-free places and designated smoking areas):** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor and enclosed public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from the places where they may exist.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

698. **Clause 24 (section 35(2)(b)(iii),** certification of designated smoking areas): If the Bill retains designated smoking areas, require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: SOCHE gave no separate justification. The proposal follows from the call to delete designated smoking areas under Clause 22.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

699. **Clause 26 (section 53, regulations):** Expand the regulation-making power to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public

registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.

Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

700. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: The amended title reflects the products the Bill regulates.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

55) Slum Child Foundation submitted as follows:

701. **Clause 3 (definition of "nicotine pouch"):** Retain and refine the definition of "nicotine pouch" for enforcement clarity.

Justification: Slum Child Foundation proposed a prohibition of nicotine pouches under Clause 12. A clear definition closes loopholes and supports seizure, enforcement and prosecution.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

702. **Clause 3 (definition of "ingredients"):** Retain the expanded definition and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.

Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

703. **Clause 3 (definition of "advertisement"):** Reject the shorter replacement definition. Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".

Clause 3 (definition of "smoking"): Retain the revised definition and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. The World Health Organization (WHO) reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

704. **Clause 3 (definitions of "tobacco product" and "characterising flavour"):** Retain both definitions. Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

705. **Clause 3 (new definitions): Insert the following new definitions:**

i. "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,

ii. "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,

iii. "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,

iv. "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of a pouch, conical, cylindrical or any other type of package,

v. "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and

vi. "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: The new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

706. **Clause 5 (Tobacco Control Advisory Committee): Amend the proposed section 5A to:**

i. delete paragraph (1)(g), which provides for the Kenya National Chamber of Commerce and Industry nominee,

ii. amend subsection (2) to clarify that the Cabinet Secretary appoints the remaining members,

iii. replace the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and

iv. require the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. Slum Child Foundation noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

707. **Clause 7 (Tobacco Control Fund): Amend section 7 of the principal Act by:**

i. setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,

ii. amending section 7(4) so that the Fund meets capital and current expenditure on research, documentation and dissemination of information, national cessation and rehabilitation programmes, public education, awareness creation and advocacy on the health, economic and environmental harms of tobacco and nicotine products, treatment and management of chronic illnesses caused by tobacco use, including cancers, cardiovascular diseases and chronic respiratory diseases, community-based programmes run by youth groups, faith-based organisations, civil society organisations and non-governmental organisations, and any incidental matter, and

iii. inserting a new section 7(4A) allocating not less than 15 percent of annual disbursements from the Fund to Kenyan civil society organisations and non-governmental organisations for tobacco control programmes, public education and advocacy.

Justification: An open-ended contribution leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. The Act and the Bill do not fund public awareness, community programmes led by civil society, or treatment of tobacco-related disease. Counties and civil society carry enforcement and education roles without dedicated funding. Leaving out treatment costs sits poorly with the right to health under Article 43 of the Constitution. Without a minimum allocation, grassroots advocacy and community monitoring remain under-resourced. Slum Child Foundation aligned the proposal with Article 12 of the FCTC on education and Article 5.3 on independent civil society monitoring.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

708. **Clause 10 (tax and price policies):** Retain the clause and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. Slum Child Foundation

cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

709. **Clause 12 (proposed section 14A, electronic nicotine delivery systems):** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. National data shows that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

710. **Clause 12 (proposed section 14B, nicotine pouches):** Delete section 14B and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. Delete consequential references in Clauses 16 and 23 that presuppose lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.

Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. Slum Child Foundation cited national data showing that 6.2 percent of adults and 4.2 percent

of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern shows deliberate targeting of young people, whose developing brains are especially vulnerable to nicotine. Use among adolescents stands at 0.22 percent, and a ban would keep it low.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

711. **Clause 12 (proposed sections 14C to 14I, product approval):** Retain the pre-market approval regime and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

712. **Clause 12 (proposed section 14J, additives and characterising flavours):** Retain the section and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.

Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. The Netherlands has moved to tobacco-flavour-only e-liquids.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

713. **Clause 13 (section 15, youth-appealing designs and sales buffer):** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".

Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases

enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction. Slum Child Foundation noted that the Bill does not amend the affected subsections of section 15, so the age change is an additional amendment.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

714. **Clause 16 (proposed section 19A, online sales):** Retain the ban on online sales and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Belgium enforces actively against online vape sales, and the Netherlands bans cross-border online sales.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

715. **Clauses 17 and 19 (county licensing and national registration):** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.

Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

716. **Clauses 18 and 23 (health warnings, plain packaging and retail warnings):** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.

Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews find that standardised packaging reduces appeal.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

717. **Clause 19 (proposed section 21B, single-use plastics):** Retain the section and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.

Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

718. **New clause (new section 21C, shisha):** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.

Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

719. **Clauses 20 and 21 (advertising, promotion and sponsorship):** Expand the provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.

Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

720. **Clause 22 (smoke-free places and designated smoking areas):** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor and enclosed public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from the places where they may exist.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

721. **Clause 24 (section 35(2)(b)(iii),** certification of designated smoking areas): If the Bill retains designated smoking areas, require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: Slum Child Foundation gave no separate justification. The proposal follows from the call to delete designated smoking areas under Clause 22.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

722. **Clause 26 (section 53, regulations):** Expand the regulation-making power to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.
Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

723. **Clause 26 (new section 53(2)(f)):** Insert a new paragraph empowering the Cabinet Secretary to prescribe the criteria, application procedure, vetting process, reporting

obligations and disbursement mechanisms for funding to non-governmental and civil society organisations engaged in tobacco control, including requirements for accountability, audit and geographic equity.

Justification: Without clear regulations, smaller and county-based organisations may fail to access the Fund. Regulations make the 15 percent allocation workable, prevent political capture, and meet the requirements of the Public Finance Management Act for fair and accountable disbursement.

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

724. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: The amended title reflects the products the Bill regulates.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

56) Support Heal and Purpose to Elevate (SHAPE) submitted as follows:

725. **Clause 3 (definition of "nicotine pouch"):** Retain and refine the definition of "nicotine pouch" for enforcement clarity.

Justification: SHAPE proposed a prohibition of nicotine pouches under Clause 12. A clear definition closes loopholes and supports seizure, enforcement and prosecution.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

726. **Clause 3 (definition of "ingredients"):** Retain the expanded definition and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.

Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

727. **Clause 3 (definition of "advertisement"):** Reject the shorter replacement definition. Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".

Justification:

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

728. **Clause 3 (definition of "smoking"):** Retain the revised definition and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. The World Health Organization (WHO) reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

729. **Clause 3 (definitions of "tobacco product" and "characterising flavour"):** Retain both definitions. Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

730. **Clause 3 (new definitions): Insert the following new definitions:**

i. "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,

ii. "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,

iii. "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,

iv. "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of a pouch, conical, cylindrical or any other type of package,

v. "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and

vi. "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: The new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

731. **Clause 5 (Tobacco Control Advisory Committee): Amend the proposed section 5A to:**

i. delete paragraph (1)(g), which provides for the Kenya National Chamber of Commerce and Industry nominee,

ii. amend subsection (2) to clarify that the Cabinet Secretary appoints the remaining members,

iii. replace the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and

iv. require the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. SHAPE noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

732. **Clause 7 (Tobacco Control Fund): Amend section 7 of the principal Act by:**

i. setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,

ii. amending section 7(4) so that the Fund meets capital and current expenditure on research, documentation and dissemination of information, national cessation and rehabilitation programmes, public education, awareness creation and advocacy on the health, economic and environmental harms of tobacco and nicotine products, treatment and management of chronic illnesses caused by tobacco use, including cancers, cardiovascular diseases and chronic respiratory diseases, community-based programmes run by youth groups, faith-based organisations, civil society organisations and non-governmental organisations, and any incidental matter, and

iii. inserting a new section 7(4A) allocating not less than 15 percent of annual disbursements from the Fund to Kenyan civil society organisations and non-governmental organisations for tobacco control programmes, public education and advocacy.

Justification: An open-ended contribution leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. The Act and the Bill do not fund public awareness, community programmes led by civil society, or treatment of tobacco-related disease. Counties and civil society carry enforcement and education roles without dedicated funding. Leaving out treatment costs sits poorly with the right to health under Article 43 of the Constitution. Without a minimum allocation, grassroots advocacy and community monitoring remain under-resourced. SHAPE aligned the proposal with Article 12 of the FCTC on education and Article 5.3 on independent civil society monitoring.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

733. **Clause 10 (tax and price policies):** Retain the clause and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 per cent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. SHAPE cited evidence

that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

734. **Clause 12 (proposed section 14A, electronic nicotine delivery systems):** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. National data shows that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

735. **Clause 12 (proposed section 14B, nicotine pouches):** Delete section 14B and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. Delete consequential references in Clauses 16 and 23 that presuppose lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.

Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. SHAPE cited national data showing that 6.2 percent of adults and 4.2 percent of university

students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern shows deliberate targeting of young people, whose developing brains are especially vulnerable to nicotine. Use among adolescents stands at 0.22 percent, and a ban would keep it low.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

736. **Clause 12 (proposed sections 14C to 14I, product approval):** Retain the pre-market approval regime and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

737. **Clause 12 (proposed section 14J, additives and characterising flavours):** Retain the section and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.

Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. The Netherlands has moved to tobacco-flavour-only e-liquids.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

738. **Clause 13 (section 15, youth-appealing designs and sales buffer):** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".

Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases

enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction. SHAPE noted that the Bill does not amend the affected subsections of section 15, so the age change is an additional amendment.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

739. **Clause 16 (proposed section 19A, online sales):** Retain the ban on online sales and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Belgium enforces actively against online vape sales, and the Netherlands bans cross-border online sales.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

740. **Clauses 17 and 19 (county licensing and national registration):** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.

Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

741. **Clauses 18 and 23 (health warnings, plain packaging and retail warnings):** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.

Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews find that standardised packaging reduces appeal.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

742. **Clause 19 (proposed section 21B, single-use plastics):** Retain the section and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.

Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

743. **New clause (new section 21C, shisha):** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.

Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

744. **Clauses 20 and 21 (advertising, promotion and sponsorship):** Expand the provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.

Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

745. **Clause 22 (smoke-free places and designated smoking areas):** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor and enclosed public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from the places where they may exist.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

746. **Clause 24 (section 35(2)(b)(iii),** certification of designated smoking areas): If the Bill retains designated smoking areas, require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: SHAPE gave no separate justification. The proposal follows from the call to delete designated smoking areas under Clause 22.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

747. **Clause 26 (section 53, regulations):** Expand the regulation-making power to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.
Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

748. **Clause 26 (new section 53(2)(f)):** Insert a new paragraph empowering the Cabinet Secretary to prescribe the criteria, application procedure, vetting process, reporting

obligations and disbursement mechanisms for funding to non-governmental and civil society organisations engaged in tobacco control, including requirements for accountability, audit and geographic equity.

Justification: Without clear regulations, smaller and county-based organisations may fail to access the Fund. Regulations make the 15 percent allocation workable, prevent political capture, and meet the requirements of the Public Finance Management Act for fair and accountable disbursement.

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

749. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: The amended title reflects the products the Bill regulates.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

57) Elewa Ulevi Consultancy submitted as follows:

750. **Clause 3 (definition of "nicotine pouch"):** Retain and refine the definition of "nicotine pouch" for enforcement clarity.

Justification: Elewa Ulevi Consultancy proposed a prohibition of nicotine pouches under Clause 12. A clear definition closes loopholes and supports seizure, enforcement and prosecution.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

751. **Clause 3 (definition of "ingredients"):** Retain the expanded definition and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.

Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-

products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

752. **Clause 3 (definition of "advertisement"):** Reject the shorter replacement definition. Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".
Justification: Elewa Ulevi Consultancy gave no separate justification for this proposal.
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

753. **Clause 3 (definition of "smoking"):** Retain the revised definition and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.
Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. The World Health Organization (WHO) reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

754. **Clause 3 (definitions of "tobacco product" and "characterising flavour"):** Retain both definitions. Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".
Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

755. **Clause 3 (new definitions): Insert the following new definitions:**

i. "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,

ii. "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,

iii. "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,

iv. "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of a pouch, conical, cylindrical or any other type of package,

v. "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and

vi. "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: The new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

756. **Clause 5 (Tobacco Control Advisory Committee):** Amend the proposed section 5A to:

i. delete paragraph (1)(g), which provides for the Kenya National Chamber of Commerce and Industry nominee,

ii. amend subsection (2) to clarify that the Cabinet Secretary appoints the remaining members,

iii. replace the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and

iv. require the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. Elewa Ulevi Consultancy noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

757. **Clause 7 (Tobacco Control Fund):** Amend section 7 of the principal Act by:

i. setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,

ii. amending section 7(4) so that the Fund meets capital and current expenditure on research, documentation and dissemination of information, national cessation and rehabilitation programmes, public education, awareness creation and advocacy on the health, economic and environmental harms of tobacco and nicotine products, treatment and management of chronic illnesses caused by tobacco use, including cancers, cardiovascular diseases and chronic respiratory diseases, community-based programmes run by youth groups, faith-based organisations, civil society organisations and non-governmental organisations, and any incidental matter, and

iii. inserting a new section 7(4A) allocating not less than 15 percent of annual disbursements from the Fund to Kenyan civil society organisations and non-governmental organisations for tobacco control programmes, public education and advocacy.

Justification: An open-ended contribution leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. The Act and the Bill do not fund public awareness, community programmes led by civil society, or treatment of tobacco-related disease. Counties and civil society carry enforcement and education roles without dedicated funding. Leaving out treatment costs sits poorly with the right to health under Article 43 of the Constitution. Without a minimum allocation, grassroots advocacy and community monitoring remain under-resourced. Elewa Ulevi Consultancy aligned the proposal with Article 12 of the FCTC on education and Article 5.3 on independent civil society monitoring.
Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

758. **Clause 10 (tax and price policies):** Retain the clause and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.
Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. Elewa Ulevi

Consultancy cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

759. **Clause 12 (proposed section 14A, electronic nicotine delivery systems):** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. National data shows that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nictone pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

760. **Clause 12 (proposed section 14B, nicotine pouches):** Delete section 14B and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. Delete consequential references in Clauses 16 and 23 that presuppose lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.

Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. Elewa Ulevi Consultancy cited national data showing that 6.2 percent of adults and 4.2 percent

of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern shows deliberate targeting of young people, whose developing brains are especially vulnerable to nicotine. Use among adolescents stands at 0.22 percent, and a ban would keep it low.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

761. **Clause 12 (proposed sections 14C to 14I, product approval):** Retain the pre-market approval regime and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

762. **Clause 12 (proposed section 14J, additives and characterising flavours):** Retain the section and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.

Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. The Netherlands has moved to tobacco-flavour-only e-liquids.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

763. **Clause 13 (section 15, youth-appealing designs and sales buffer):** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".

Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases

enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction. Elewa Ulevi Consultancy noted that the Bill does not amend the affected subsections of section 15, so the age change is an additional amendment.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

764. **Clause 16 (proposed section 19A, online sales):** Retain the ban on online sales and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Belgium enforces actively against online vape sales, and the Netherlands bans cross-border online sales.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

765. **Clauses 17 and 19 (county licensing and national registration):** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.

Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

766. **Clauses 18 and 23 (health warnings, plain packaging and retail warnings):** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.

Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews find that standardised packaging reduces appeal.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

767. **Clause 19 (proposed section 21B, single-use plastics):** Retain the section and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.

Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

768. **New clause (new section 21C, shisha):** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.

Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

769. **Clauses 20 and 21 (advertising, promotion and sponsorship):** Expand the provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.

Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

770. **Clause 22 (smoke-free places and designated smoking areas):** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor and enclosed public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from the places where they may exist.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

771. **Clause 24 (section 35(2)(b)(iii),** certification of designated smoking areas): If the Bill retains designated smoking areas, require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: Elewa Ulevi Consultancy gave no separate justification. The proposal follows from the call to delete designated smoking areas under Clause 22.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

772. **Clause 26 (section 53, regulations):** Expand the regulation-making power to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.
Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

773. **Clause 26 (new section 53(2)(f)):** Insert a new paragraph empowering the Cabinet Secretary to prescribe the criteria, application procedure, vetting process, reporting

obligations and disbursement mechanisms for funding to non-governmental and civil society organisations engaged in tobacco control, including requirements for accountability, audit and geographic equity.

Justification: Without clear regulations, smaller and county-based organisations may fail to access the Fund. Regulations make the 15 percent allocation workable, prevent political capture, and meet the requirements of the Public Finance Management Act for fair and accountable disbursement.

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

774. **Long title: Amend the long title to read:** "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: The amended title reflects the products the Bill regulates.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

58) The International Institute of Legislative Affairs submitted as follows:

775. **Long title:** Amend the long title to include nicotine pouches as a specific item which the Bill seeks to regulate.

Justification:

To align the long title with the substances and products expressly dealt within the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

776. **Clause 3:**

i. Amend the definition of "ingredients" to include constituents, emissions, contaminants and by-products generated during heating. aerosolization. storage and use and require disclosure of device-component emissions.

Justification: To widen the definition

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

777. Retain the definition of "advertisement".

Justification: The existing definition is broader.

Committee Resolution: The Committee adopted the proposal. The Committee resolved that the existing broad definition of "advertisement" in the Act shall be retained.

778. Insert the definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "nicotine analogues", "shisha" and "shisha smoking".
Justification: To close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

779. Amend the definition of "smoking" to include inhaling or exhaling smoke or vapour delivered through electronic means.
Justification: To cover any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

780. Amend the definition of "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.
Justification: To include a functional definition which reduces evasive product design and supports enforcement against lookalike reformulations.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

781. **Clause 5:**
   i. Amend the composition of the Advisory Committee by deleting the representative of KNCCI

Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

782. Amend the nominating authority of the person with expertise on matters relating to tobacco control and the person representing NGOs to be nominated by the Cabinet Secretary for Health.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

783. **Clause 7:**

i. Insert a statutory minimum amount for the solatium compensatory contribution.

Justification: Leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

784. Amend the uses of the Fund to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support.

Justification: The Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

785. Insert a clear statutory framework for disbursement of the Fund to MDAs, academic and research institutions, county governments, and Kenyan CSOs engaged in tobacco control.

Justification: The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards.

Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

786. **Clause 10:** Amend to expressly provide that tobacco taxes shall be at least 75% of retail price with annual adjustment for inflation an income growth and expressly earmark a defined share for tobacco control

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

787. **Clause 12:** Delete the proposed new section 14B on the requirements on the manufacture and sale of nicotine products.
Justification: To provide for a total ban on nicotine pouches as nicotine pouches are emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

788. **Clause 13:** Amend to increase the minimum sales buffer from 100 metres to at least 300 metres around premises primarily serving children.
Justification: The distance is low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

789. Amend to increase the age threshold from eighteen years to twenty-one years.
Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

790. **Clause 16:** Remove the ban on online sales of tobacco products. Instead, impose duties on online platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Governments now treat online sales and cross-border e-commerce as a core regulatory frontier.

Committee Resolution: The Committee did not adopt the proposal to remove the ban on online sales. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

791. **Clause 17 and 19:** Amend to require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.
Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

792. **Clauses 18 and 23:** Amend to extend large pictorial warnings and standardised packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.
Justification: WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognizes plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

793. **Clause 19:** Amend to expressly ban disposable vapes as a product class, impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

794. Insert a new section 21C prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

795. **Clauses 20 and 21:** Delete the designated-smoking-area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with specified outdoor smoke/vape-free perimeters around schools, hospitals, playgrounds and public-building entrances.
Justification: There is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Smoking areas facilitate smoking and normalise the behaviour.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

796. **Clause 22:** Amend to delete the DSA model entirely and move to 100% smoke-free indoor and enclosed public places or, in the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

797. **Clause 24:** If DSAs are retained, require not only certification by a qualified engineer but also approval by the county public health officer, with inspection and approval fees.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

798. **Clause 26:** Amend section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardised packaging rules, and an express bar on delegating state regulatory functions to the tobacco industry.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

59) The National Taxpayers Association submitted as follows:

799. **Long title:** Amend the long title to include nicotine pouches as specific item which the Bill seeks to regulate.
Justification: To align the long title with the substances and products expressly dealt with in the Bill.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

800. **Clause 3:** Amend the definition of "ingredients" to include constituents, emissions, contaminants and by-products generated during heating. aerosolization. storage and use and require disclosure of device-component emissions.
Justification: To widen the definition.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

801. Retain the definition of "advertisement".
Justification: The existing definition is broader.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the definition of broader definition of "advertisement" as provided for under the Act.

802. Insert the definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "nicotine analogues", "shisha" and "shisha smoking".
Justification: To close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The existing broad definition of "advertisement" in the Act shall be retained. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

803. Amend the definition of "smoking" to include inhaling or exhaling smoke or vapour delivered through electronic means.
Justification: To cover any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

804. Amend the definition of "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.

Justification: To include a functional definition which reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

805. **Clause 5:** Amend the composition of the Advisory Committee by deleting the representative of KNCCI

Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

806. Amend the nominating authority of the person with expertise on matters relating to tobacco control and the person representing NGOs to be nominated by the Cabinet Secretary for Health.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

807. **Clause 7:** Insert a statutory minimum amount for the solatium compensatory contribution.

Justification: Leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

808. Amend the uses of the Fund to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support.

Justification: The Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement.
Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

809. Insert a clear statutory framework for disbursement of the Fund to MDAs, academic and research institutions, county governments, and Kenyan CSOs engaged in tobacco control.
Justification: The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards.
Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

810. **Clause 10:** Amend to expressly provide that tobacco taxes shall be at least 75% of retail price with annual adjustment for inflation an income growth and expressly earmark a defined share for tobacco control
Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

811. **Clause 12:** Delete the proposed new section 14B on the requirements on the manufacture and sale of nicotine products.
Justification: To provide for a total ban on nicotine pouches as nicotine pouches are emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

812. **Clause 13:** Amend to increase the minimum sales buffer from 100 metres to at least 300 metres around premises primarily serving children.

Justification: The distance is low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children.

Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

813. Amend to increase the age threshold from eighteen years to twenty-one years.

Justification:

Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

814. **Clause 16:** Remove the ban on online sales of tobacco products. Instead impose duties on online platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: Governments now treat online sales and cross-border e-commerce as a core regulatory frontier.

Committee Resolution: The Committee did not adopt the proposal to remove the ban on online sales. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

815. **Clause 17 and 19:** Amend to require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.

Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

816. **Clauses 18 and 23:** Amend to extend large pictorial warnings and standardized packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.

Justification: WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognizes plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

817. **Clause 19:** Amend to expressly ban disposable vapes as a product class, impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.

Justification: Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

818. Insert a new section 21C prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.

Justification:

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

819. **Clauses 20 and 21:** Delete the designated-smoking-area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with specified outdoor smoke/vape-free perimeters around schools, hospitals, playgrounds and public-building entrances.

Justification: There is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Smoking areas facilitate smoking and normalise the behaviour.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

820. **Clause 22:** Amend to delete the DSA model entirely and move to 100% smoke-free indoor and enclosed public places or in the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

821. **Clause 24:** If DSAs are retained, require not only certification by a qualified engineer but also approval by the county public health officer, with inspection and approval fees.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

822. **Clause 26:** Amend section 53 to authorize track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardized packaging rules, and an express bar on delegating state regulatory functions to the tobacco industry.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

60) The Students Campaign Against Drugs submitted as follows:

823. **Long title:** Amend the long title to include nicotine pouches as specific item which the Bill seeks to regulate.
Justification: To align the long title with the substances and products expressly dealt within the Bill.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

824. **Clause 3:** Amend the definition of "ingredients" to include constituents, emissions, contaminants and by-products generated during heating. aerosolization. storage and use and require disclosure of device-component emissions.
Justification: To widen the definition.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

825. Retain the definition of "advertisement".
Justification: The existing definition is broader.

Committee Resolution: The Committee adopted the proposal. The Committee resolved that the existing broad definition of "advertisement" in the Act shall be retained.

826. Insert the definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "nicotine analogues", "shisha" and "shisha smoking".
Justification: To close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

827. Amend the definition of "smoking" to include inhaling or exhaling smoke or vapour delivered through electronic means.
Justification: To cover any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

828. Amend the definition of "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.
Justification: To include a functional definition which reduces evasive product design and supports enforcement against lookalike reformulations.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

829. **Clause 5:** Amend the composition of the Advisory Committee by deleting the representative of KNCCI
Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

830. Amend the nominating authority of the person with expertise on matters relating to tobacco control and the person representing NGOs to be nominated by the Cabinet Secretary for Health.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

831. **Clause 7:** Insert a statutory minimum amount for the solatium compensatory contribution.
Justification: Leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure.
Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

832. Amend the uses of the Fund to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support.
Justification: The Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement.
Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

833. Insert a clear statutory framework for disbursement of the Fund to MDAs, academic and research institutions, county governments, and Kenyan CSOs engaged in tobacco control.
Justification: The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards.
Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

834. **Clause 10:** Amend to expressly provide that tobacco taxes shall be at least 75% of retail price with annual adjustment for inflation an income growth and expressly earmark a defined share for tobacco control

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

835. **Clause 12:** Delete the proposed new section 14B on the requirements on the manufacture and sale of nicotine products.
Justification: To provide for a total ban on nicotine pouches as nicotine pouches are emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

836. **Clause 13:** Amend to increase the minimum sales buffer from 100 metres to at least 300 metres around premises primarily serving children.
Justification: Distance is low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

837. Amend to increase the age threshold from eighteen years to twenty-one years.
Justification:
Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

838. **Clause 16:** Remove the ban on online sales of tobacco products. Instead impose duties on online platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Governments now treat online sales and cross-border e-commerce as a core regulatory frontier.

Committee Resolution: The Committee did not adopt the proposal to remove the ban on online sales. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

839. **Clause 17 and 19:** Amend to require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.
Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

840. **Clauses 18 and 23:** Amend to extend large pictorial warnings and standardized packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.
Justification: WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognizes plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

841. **Clause 19:** Amend to expressly ban disposable vapes as a product class, impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

842. Insert a new section 21C prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.
Justification:
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

843. **Clauses 20 and 21:** Delete the designated-smoking-area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with specified outdoor smoke/vape-free perimeters around schools, hospitals, playgrounds and public-building entrances.
Justification: There is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Smoking areas facilitate smoking and normalise the behaviour.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

844. **Clause 22:** Amend to delete the DSA model entirely and move to 100% smoke-free indoor and enclosed public places or in the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

845. **Clause 24:** If DSAs are retained, require not only certification by a qualified engineer but also approval by the county public health officer, with inspection and approval fees.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

846. **Clause 26:** Amend section 53 to authorize track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardized packaging rules, and an express bar on delegating state regulatory functions to the tobacco industry.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

61) The Non-Communicable Diseases Alliance Kenya submitted as follows:

847. **Long title:** Amend the long title to include nicotine pouches as specific item which the Bill seeks to regulate.
Justification: To align the long title with the substances and products expressly dealt within the Bill.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

848. **Clause 3:** Amend the definition of "ingredients" to include constituents, emissions, contaminants and by-products generated during heating. aerosolization. storage and use and require disclosure of device-component emissions.
Justification: To widen the definition.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

849. Retain the definition of "advertisement".
Justification: The existing definition is broader.
Committee Resolution: The Committee adopted the proposal. The Committee resolved that the existing broad definition of "advertisement" in the Act shall be retained.

850. Insert the definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "nicotine analogues", "shisha" and "shisha smoking".
Justification: To close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

851. Amend the definition of "smoking" to include inhaling or exhaling smoke or vapour delivered through electronic means.
Justification: To cover any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

852. Amend the definition of "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.

Justification: To include a functional definition which reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

853. **Clause 5:** Amend the composition of the Advisory Committee by deleting the representative of KNCCI

Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

854. Amend the nominating authority of the person with expertise on matters relating to tobacco control and the person representing NGOs to be nominated by the Cabinet Secretary for Health.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

855. **Clause 7:** Insert a statutory minimum amount for the solatium compensatory contribution.

Justification: Leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

856. Amend the uses of the Fund to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support.

Justification: The Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement.
Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

857. Insert a clear statutory framework for disbursement of the Fund to MDAs, academic and research institutions, county governments, and Kenyan CSOs engaged in tobacco control.
Justification: The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards.
Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

858. **Clause 10:** Amend to expressly provide that tobacco taxes shall be at least 75% of retail price with annual adjustment for inflation an income growth and expressly earmark a defined share for tobacco control
Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

859. **Clause 12:** Delete the proposed new section 14B on the requirements on the manufacture and sale of nicotine products.
Justification: To provide for a total ban on nicotine pouches as nicotine pouches are emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

860. **Clause 13:** Amend to increase the minimum sales buffer from 100 metres to at least 300 metres around premises primarily serving children.

Justification: Distance is low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children.

Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

861. Amend to increase the age threshold from eighteen years to twenty-one years.

Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

862. **Clause 16:** Remove the ban on online sales of tobacco products. Instead impose duties on online platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: Governments now treat online sales and cross-border e-commerce as a core regulatory frontier.

Committee Resolution: The Committee did not adopt the proposal to remove the ban on online sales. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

863. **Clause 17 and 19:** Amend to require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.

Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

864. **Clauses 18 and 23:** Amend to extend large pictorial warnings and standardized packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.

Justification: WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognizes plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

865. **Clause 19:** Amend to expressly ban disposable vapes as a product class, impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.

Justification: Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

866. Insert a new section 21C prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.

Justification:

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

867. **Clauses 20 and 21:** Delete the designated-smoking-area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with specified outdoor smoke/vape-free perimeters around schools, hospitals, playgrounds and public-building entrances.

Justification: There is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Smoking areas facilitate smoking and normalise the behaviour.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

868. **Clause 22:** Amend to delete the DSA model entirely and move to 100% smoke-free indoor and enclosed public places or in the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

869. **Clause 24:** If DSAs are retained, require not only certification by a qualified engineer but also approval by the county public health officer, with inspection and approval fees.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

870. **Clause 26:** Amend section 53 to authorize track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardized packaging rules, and an express bar on delegating state regulatory functions to the tobacco industry.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

62) The Kenya Law Students Society submitted as follows:

General comments:

871. The regulatory framework proposed in the Bill imposes significant obligations on lawful adult consumers, retailers and economic actors. In doing so, it must satisfy the constitutional threshold that such limitations are rationally connected to their objective, proportionate in their design and implemented through clear and predictable legal mechanisms.
The Bill lacks legal consequences where statutory decision-making timelines such as product approval are not met. A framework that imposes obligations on applicants without imposing corresponding accountability on regulators creates the risk of indefinite administration delay.
The proposed structure of the Tobacco Control Advisory Committee raises fundamental governance concerns. A structured, the Committee appears heavily weighted towards executive influence with appointment powers concentrated in the Cabinet Secretary and limited space for independent, civil society and consumer voices. Advisory bodies that inform regulatory decision-making must reflect a diversity of perspectives.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved that any delay in administrative decisions is remedied through Article 47 of the Constitution and the Fair Administrative Action Act, Cap. 7L.

63) The Association of Public Health Officers submitted as follows:

872. **Regulation of Electronic Nicotine Delivery Systems**

The Bill should clearly define all categories of products, distinguish between nicotine-containing and non-nicotine containing products and provide for classifications standards aligned with international best practices including WHO Framework Convention on Tobacco Control. Insert a comprehensive definitions sections to eliminate interpretive uncertainty and ensure regulatory clarity.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the definition of "ingredients" in Clause 3 already covers tobacco, nicotine and the chemicals used in electronic cigarettes and related products and read together with the definition of "tobacco product", which includes nicotine from any source, synthetic nicotine and nicotine analogues, it addresses the concerns on the forms of nicotine covered by the Act.

873. **Licensing and market entry controls**

The regulatory oversight may encourage illicit trade and lacks streamlined procedures which may burden legitimate businesses. Therefore, the Bill should establish a transparent, efficient and time-bound regime; provide for digital application processes and clear appeal mechanisms; and ensure proportional regulatory requirements based on scale of operation.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

874. **Protection of public health**

Introduce strict age-verification requirements for purchase; prohibit advertising, promotion and sponsorship targeting youths; and restrict sale near schools and educational institutions.

Committee Resolution: The Committee adopted the proposal in part. The prohibition of sale to persons under eighteen years and of youth-appealing designs is retained in Clause 13. Online sales are prohibited in section 19A, as age cannot be verified online. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

875. **Taxation and pricing measures**

Over-taxation may incentivize black-market products while under-taxation may increase accessibility and uptake. Therefore, the Bill may adopt a balanced taxation framework and ensure tax policy supports public health objectives without encouraging illicit trade.

Committee Resolution: The Committee noted the support. Clause 10 is retained, requiring periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

876. **Enforcement mechanisms**

Clearly designate enforcement authorities and their respective roles; provide inter-agency coordination mechanisms; and introduce proportionate penalties that are deterrent and not excessive.

Committee Resolution: The Committee did not adopt this proposal. The Committee noted that Part VII of the Tobacco Control Act, Cap. 245A already contains provisions on enforcement of the Act including offences and proportionate penalties.

877. **Economic and industry impact**

The Bill may affect businesses engaged in the importation and sale of ENDS products. Therefore, the Bill should introduce transitional provisions to allow businesses time to comply and conduct stakeholder engagement with affected industry players.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that a transitional period shall be provided to allow stock lawfully on the market before commencement to be sold or withdrawn but shall not apply to products prohibited under section 14B.

64) Women Amplifying Voices Against Impunity CBO (WEKESWA), in a separate memorandum, submitted as follows:

878. **Long title:** Amend the long title to include nicotine pouches as specific item which the Bill seeks to regulate.

Justification: To align the long title with the substances and products expressly dealt within the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

879. **Clause 3:** Amend the definition of "ingredients" to include constituents, emissions, contaminants and by-products generated during heating. aerosolization. storage and use and require disclosure of device-component emissions.

Justification: To widen the definition.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

880. Retain the definition of "advertisement".

Justification: The existing definition is broader.

Committee Resolution: The Committee adopted the proposal. The Committee resolved that the existing broad definition of "advertisement" in the Act shall be retained.

881. Insert the definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "nicotine analogues", "shisha" and "shisha smoking".

Justification: To close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

882. Amend the definition of "smoking" to include inhaling or exhaling smoke or vapour delivered through electronic means.
Justification: To cover any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

883. Amend the definition of "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.
Justification: To include a functional definition which reduces evasive product design and supports enforcement against lookalike reformulations.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

884. **Clause 5:** Amend the composition of the Advisory Committee by deleting the representative of KNCCI
Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

885. Amend the nominating authority of the person with expertise on matters relating to tobacco control and the person representing NGOs to be nominated by the Cabinet Secretary for Health.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

886. **Clause 7:** Insert a statutory minimum amount for the solatium compensatory contribution.

Justification: Leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

887. Amend the uses of the Fund to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support.

Justification: The Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

888. Insert a clear statutory framework for disbursement of the Fund to MDAs, academic and research institutions, county governments, and Kenyan CSOs engaged in tobacco control.

Justification: The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards.

Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

889. **Clause 10:** Amend to expressly provide that tobacco taxes shall be at least 75% of retail price with annual adjustment for inflation an income growth and expressly earmark a defined share for tobacco control

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention

of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

890. **Clause 12:** Delete the proposed new section 14B on the requirements on the manufacture and sale of nicotine products.
Justification: To provide for a total ban on nicotine pouches, as nicotine pouches are emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

891. **Clause 13:** Amend to increase the minimum sales buffer from 100 metres to at least 300 metres around premises primarily serving children.
Justification: The distance is low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

892. Amend to increase the age threshold from eighteen years to twenty-one years.
Justification:
Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

893. **Clause 16:** Remove the ban on online sales of tobacco products. Instead impose duties on online platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Governments now treat online sales and cross-border e-commerce as a core regulatory frontier.
Committee Resolution: The Committee did not adopt the proposal to remove the ban on online sales. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

894. **Clause 17 and 19:** Amend to require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.
Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

895. **Clauses 18 and 23:** Amend to extend large pictorial warnings and standardized packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.
Justification: WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognizes plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

896. **Clause 19:** Amend to expressly ban disposable vapes as a product class, impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

897. **Insert a new section 21C** prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.
Justification:
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A

prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

898. **Clauses 20 and 21:** Delete the designated-smoking-area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with specified outdoor smoke/vape-free perimeters around schools, hospitals, playgrounds and public-building entrances.
Justification: There is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Smoking areas facilitate smoking and normalise the behaviour.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

899. **Clause 22:** Amend to delete the DSA model entirely and move to 100% smoke free indoor and enclosed public places or in the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

900. **Clause 24:** If DSAs are retained, require not only certification by a qualified engineer but also approval by the county public health officer, with inspection and approval fees.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

901. **Clause 26:** Amend section 53 to authorize track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardized packaging rules, and an express bar on delegating state regulatory functions to the tobacco industry.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

65) The Nova Life Society submitted as follows:

902. **Long title:** Amend the long title to include nicotine pouches as specific item which the Bill seeks to regulate.
Justification: To align the long title with the substances and products expressly dealt within the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

903. **Clause 3:** Amend the definition of "ingredients" to include constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage and use and require disclosure of device-component emissions.
Justification: To widen the definition.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

904. Retain the definition of "advertisement".
Justification: The existing definition is broader.
Committee Resolution: The Committee adopted the proposal. The Committee resolved that the existing broad definition of "advertisement" in the Act shall be retained.

905. Insert the definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "nicotine analogues", "shisha" and "shisha smoking".
Justification: To close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

906. Amend the definition of "smoking" to include inhaling or exhaling smoke or vapour delivered through electronic means.
Justification: To cover any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

907. Amend the definition of "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.
Justification: To include a functional definition which reduces evasive product design and supports enforcement against lookalike reformulations.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to

cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

908. **Clause 5:** Amend the composition of the Advisory Committee by deleting the representative of KNCCI

Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

909. Amend the nominating authority of the person with expertise on matters relating to tobacco control and the person representing NGOs to be nominated by the Cabinet Secretary for Health.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

910. **Clause 7:** Insert a statutory minimum amount for the solatium compensatory contribution.

Justification: Leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

911. Amend the uses of the Fund to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support.

Justification: The Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

912. Insert a clear statutory framework for disbursement of the Fund to MDAs, academic and research institutions, county governments, and Kenyan CSOs engaged in tobacco control.
Justification: The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards.
Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

913. **Clause 10:** Amend to expressly provide that tobacco taxes shall be at least 75% of retail price with annual adjustment for inflation an income growth and expressly earmark a defined share for tobacco control
Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

914. **Clause 12:** Delete the proposed new section 14B on the requirements on the manufacture and sale of nicotine products.
Justification: To provide for a total ban on nicotine pouches as nicotine pouches are emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

915. **Clause 13:** Amend to increase the minimum sales buffer from 100 metres to at least 300 metres around premises primarily serving children.
Justification: Distance is low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre

restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

916. Amend to increase the age threshold from eighteen years to twenty-one years.
Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

917. **Clause 16:** Remove the ban on online sales of tobacco products. Instead impose duties on online platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Governments now treat online sales and cross-border e-commerce as a core regulatory frontier.
Committee Resolution: The Committee did not adopt the proposal to remove the ban on online sales. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

918. **Clause 17 and 19:** Amend to require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.
Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

919. **Clauses 18 and 23:** Amend to extend large pictorial warnings and standardised packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.
Justification: WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognises plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings

including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

920. **Clause 19:** Amend to expressly ban disposable vapes as a product class, impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

921. Insert a new section 21C prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.
Justification:
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

922. **Clauses 20 and 21:** Delete the designated-smoking-area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with specified outdoor smoke/vape-free perimeters around schools, hospitals, playgrounds and public-building entrances.
Justification: There is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Smoking areas facilitate smoking and normalise the behaviour.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

923. **Clause 22:** Amend to delete the DSA model entirely and move to 100% smoke free indoor and enclosed public places or in the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

924. **Clause 24:** If DSAs are retained, require not only certification by a qualified engineer but also approval by the county public health officer, with inspection and approval fees.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

925. **Clause 26:** Amend section 53 to authorize track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardized packaging rules, and an express bar on delegating state regulatory functions to the tobacco industry.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

66) The National Cancer Institute of Kenya submitted as follows:

926. **Definitions**: Expand definitions to expressly include synthetic nicotine products, heated tobacco products, nicotine pouches, dissolvable nicotine products and future nicotine delivery technologies.
Justification: To ensure comprehensive protection against future regulatory gaps.
Committee Resolution: The Committee noted the support. Clause 12 provides for pre-market approval, testing, flavour restrictions, packaging and the other measures proposed, and the definitions in Clause 3 extend to synthetic nicotine, nicotine pouches and related products.

927. **Regulating ENDS:** The Bill should subject ENDS to the same restrictions applicable to conventional tobacco products; prohibit youth-oriented product design and marketing; require health warnings and restrict public use in smoke-free areas;
Justification: ENDS contribute to nicotine dependence and may facilitate transition to conventional tobacco use.
Committee Resolution: The Committee noted the support. Clause 12 provides for pre-market approval, testing, flavour restrictions, packaging and the other measures proposed, and the definitions in Clause 3 extend to synthetic nicotine, nicotine pouches and related products.

928. **Advertising, promotion and sponsorship:** Introduce comprehensive prohibition of social media advertising, influencer marketing, brand stretching, product placement, event sponsorship and corporate social responsibility activities by tobacco companies.
Justification: Advertising remains a major driver of tobacco initiation among adolescents and young adults.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to retain Clauses 20 and 21. The Committee further noted that the Act already prohibits advertising, promotion and sponsorship.

929. **Packaging and labelling:** Introduce a mandatory plain packaging requirement and increase pictorial health warnings to at least 80% of packaging surfaces.
Justification: Plain packaging reduces tobacco product attractiveness and increases quit intentions.
Committee Resolution: The Committee adopted the proposal in part. The 75% front-and-back health warning and the plain-packaging power in Clause 18 are retained and apply to electronic nicotine delivery systems and nicotine pouches as provided in the Bill.

930. **Youth protection:** Prohibit sale within 500 metres of schools; sale of flavoured tobacco and nicotine products; online sales without age verification.
Justification: To protect children and youth who are vulnerable to nicotine addiction.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to retain section 14J and section 19A. The Committee did not adopt the proposal to increase the distance, noting that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained.

931. **Enforcement:** Increase penalties for sale to minors; illegal advertising; smuggling and illicit trade; and repeat offenders.
Justification: For effective compliance, stronger deterrence is required.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

67) Kenyan Network of Cancer Organizations submitted as follows:

932. **Clause 2**: Amend the long title to read "An Act of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

933. **Clause 3 (definition of "ingredients"):** Retain the expanded definition but add "constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use", and require disclosure of device-component emissions.
Justification: For novel nicotine products the main risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents matter. Regulating contents and emissions aligns the Bill with modern product regulation and makes later standards on testing, approval and recall legally safer.

Committee Resolution: The Committee adopted the proposal in part. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

934. **Clause 3 (definition of "advertisement"):** Reject the replacement definition; retain the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics".

Justification: A shorter replacement definition risks narrowing the existing coverage of advertising and promotion. The existing broad definition, supplemented by promotion through brand characteristics, is consistent with Article 13 of the WHO FCTC and prevents indirect marketing through brand imagery.

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

935. **Clause 3 (new definitions):** Insert definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha" and "shisha smoking".

Justification: Intended to close interpretive gaps and support enforcement of the packaging, flavour and shisha provisions.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

936. **Clause 3 (definition of "smoking"):** Retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not and whether visible or invisible.

Justification: Closes the loophole under which sellers market products as nicotine-free or "herbal" and argue that smoke-free protections do not apply. WHO states that e-cigarette emissions contain nicotine and other toxic substances harmful to users and non-users. A technology-neutral definition future-proofs the Act against new devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

937. **Clause 3 (definitions of "tobacco product" and "characterising flavour"):** Retain and strengthen by defining nicotine analogues functionally and extending "characterising flavour" to cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry practice includes chemical reformulation, branding tricks and non-traditional descriptors that preserve youth appeal while formally avoiding a named flavour. A narrow definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours". WHO and the FCTC Secretariat have called for bans on ingredients that increase attractiveness and palatability; a functional definition supports enforcement against look-alike products.

Committee Resolution: The Committee adopted the proposal in part. The inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

938. **Clause 5 (Tobacco Control Advisory Committee):** Remove the KNCCI/business representative seat; add mandatory public disclosure of interests, minutes, agendas and all meetings with industry; prohibit gifts, partnerships and non-essential interactions; and require recusals backed by sanctions.

Justification: The business seat is a structural weakness. The tobacco industry has a direct commercial interest in weakening demand-reduction measures, and Article 5.3 of the WHO FCTC requires protection of public health policy from the commercial and other vested interests of the tobacco industry. The conflict-of-interest wording is useful but insufficient if the Committee still institutionalises an industry-adjacent nomination route. The safer model is to remove the seat and legislate transparency, limited interactions and enforceable recusals.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

939. **Clause 5 (expert member):** Amend to "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health" in place of nomination by the Council of Governors.

Justification: Same justification as above: nominations to the Committee should rest with the Cabinet Secretary for Health, who is responsible for health policy and for protecting the Committee from conflicts of interest.

Committee Resolution: The Committee did not adopt the proposal. The nomination of the expert member by the Council of Governors is retained, as it gives effect to the role of counties in public health and tobacco control under the Fourth Schedule to the Constitution and to the principle of consultation and cooperation between the two levels of government.

940. **Clause 5 (NGO representative):** Amend to require nomination of the representative of non-governmental organisations involved in tobacco control by the Cabinet Secretary for Health.

Justification: Same justification as above: nomination by the Cabinet Secretary for Health ensures the representative is independent of industry-linked groups.

Committee Resolution: The Committee did not adopt the proposal. The nomination of the representative of non-governmental organisations remains as provided in the Bill. The Committee noted the need for a transparent and competitive selection process.

941. **Clause 7 (solatium compensatory contribution):** Insert a statutory floor of not less than 2% of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and require annual publication of collections and use of the Fund.

Justification: Leaving the contribution open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in its regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment, and annual public reporting ties the Fund visibly to health protection.

Committee Resolution: The Committee did not adopt a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

942. **Clause 7 (purposes of the Fund):** Amend section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support.

Justification: The Act and the Bill do not explicitly fund public awareness, civil-society-led community programmes or treatment of tobacco-related disease. Counties and civil society have enforcement and education roles but no dedicated funding, and treatment costs are left uncovered, which is at odds with the right to health under Article 43. The amendment also aligns with Article 12 of the WHO FCTC (education, communication, training and public awareness).

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

943. **Clause 7 (disbursement of the Fund)**: Insert a new subsection providing for regulations by the Cabinet Secretary on disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumber the current subsection (5) as subsection (6).

Justification: The Fund is a sector-specific statutory fund and the Act vests regulatory authority in the Cabinet Secretary for Health, who is best placed to prescribe eligibility, reporting and accountability. Without express regulatory authority the Fund risks being inaccessible to smaller or county-based organisations. A clear framework ensures

transparency, prevents capture and satisfies the Public Finance Management Act requirements for fair and accountable disbursement of public funds. Enforcement of tobacco control is a devolved function, yet the Ministry of Health is not devolving Fund resources to counties.
Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

944. **Clause 10 (tax and price policies):** Retain and strengthen by requiring that tobacco taxes move to at least 75% of retail price, with annual adjustment for inflation and income growth, and expressly earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.
Justification: Taxation is the most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats taxes above 75% of retail price as the highest standard and stresses the need to maintain affordability pressure over time. Unless taxes are indexed to inflation and income growth, products become cheaper in real terms and youth access rises. Earmarking revenue answers an implementation problem: strong laws fail when enforcement, cessation and surveillance are unfunded.
Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

945. **Clause 12 (proposed section 14A: electronic nicotine delivery systems):** Prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets and a nicotine cap of not more than 10 mg/mL.
Justification: The present text normalises market entry for an addictive product class whose public-health risks remain substantial. WHO states that e-cigarettes are harmful and not safe, expose bystanders to harmful aerosol and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU framework (20 mg/mL, 10 mL, 2 mL) is a minimum floor, not a best-practice ceiling, and the United Kingdom and Belgium have prohibited disposable vapes. In the alternative, only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets and a nicotine cap of not more than 10 mg/mL should be permitted.
Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which

electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

946. **Clause 3 (definition of "nicotine pouch") and Clause 12 (proposed section 14B), with consequential references in Clauses 16 and 23:** Retain the definition but replace section 14B with an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch", with a fine of up to one million shillings or imprisonment for up to two years, or both, and delete the consequential references that assume lawful sale. In the alternative, regulate pouches like tobacco products with flavours banned, plain packaging, no displays or online sales and a cap of not more than 4 mg per pouch.
Justification: A prohibition model is preferable because nicotine pouches are discreet oral products that are easy to conceal and to use in smoke-free spaces and are often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified pouches as emerging products that create serious regulatory challenges, often promoted as "tobacco-free", and has called for urgent action on flavours. Prevalence is low among adult smokers (6.2% of adults) but high among university students (4.2%) who smoke less, which indicates targeting of young people. In the alternative, if pouches are not prohibited, they should be regulated like tobacco products, with flavours banned, plain packaging, no displays or online sales and a lower nicotine cap of not more than 4 mg per pouch in place of the 20 mg proposed.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

947. **Clause 12 (proposed sections 14C–14I: approval, testing, listing and bans):** Retain and strengthen by requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval or refusal, and a clear appeal and recall process.
Justification: This is one of the strongest provisions of the Bill and should be defended. A product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and compliance before market entry and throughout the product life cycle, and independent testing is essential because industry-submitted claims on ingredients and emissions are not self-verifying. A public register supports consumer protection, customs enforcement and county licensing.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and

banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

948. **Clause 12 (proposed section 14J: additives and characterising flavours):** Retain and strengthen by expressly covering menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation across all tobacco and nicotine products.
Justification: This clause is a core youth-protection measure. WHO and the FCTC Secretariat call for urgent action against flavours and other design features that increase attractiveness and palatability. Partial bans are easily evaded through cooling additives, ambiguous descriptors, accessories and device design, so a comprehensive ban must be based on sensory effect and not merely on names.
Committee Resolution: The Committee adopted the proposal. The proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

949. **Clause 13 (section 15: youth-appealing designs and sales buffer): Retain** the design prohibition and, in section 15(5A), increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children.
Justification: The design ban is sound. The 100-metre distance is too low for practical enforcement in dense urban settings and does not adequately reduce the visibility and availability of tobacco and nicotine products around children. Kenya already applies a 300-metre public-health buffer in alcohol-control law for learning institutions, and using the same benchmark improves coherence in child-protection legislation.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

950. **Clause 13 (minimum age):** Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".
Justification: Raising the age to twenty-one brings tobacco control into line with the proposed alcohol-control law and eases enforcement. The adolescent brain continues to develop until about the age of 25, so raising the age of access to twenty-one gives a further three years of protection from nicotine addiction. This is an additional amendment, as these subsections are not amended by the Bill.
Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of

the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

951. **Clause 16 (proposed section 19A: online sales): Retain** and strengthen by imposing duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: A simple ban is necessary but not sufficient. Online tobacco and vape commerce shifts to social media, messaging channels, cross-border websites and intermediary platforms. Without platform obligations, traceability and takedown mechanisms enforcement is reactive and uneven. Belgium and the Netherlands treat online and cross-border sales as a core regulatory frontier; Kenya should legislate the enforcement chain and not only the prohibited act.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online. The Committee resolved that regulations shall require platform operators and payment and delivery service providers to cooperate with enforcement agencies, including the Communications Authority of Kenya, in removing unlawful listings.

952. **Clauses 17 and 19 (county licensing and national registration): Retain** the dual gatekeeping model but require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial-ownership disclosure, retailer-density controls and mandatory publication of suspensions and revocations.
Justification: County licensing plus national registration is defensible because it gives local and national authorities visibility over the supply chain. The risk is fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial-ownership disclosure and publication of licence outcomes help identify front companies and repeat offenders, consistent with the licensing and traceability logic of the Protocol to Eliminate Illicit Trade in Tobacco Products.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

953. **Clauses 18 and 23 (pack warnings, plain packaging and retail warnings):** Defend the 75% warning rule and plain-packaging power; extend large pictorial warnings and standardised packaging to ENDS and nicotine pouches; require a quitline message and a poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter signage at retail.
Justification: This is a major public-health gain and should not be diluted. Guidelines to Article 11 of the WHO FCTC treat large, clear and prominent warnings as essential and recognise plain packaging as a legitimate means of reducing product appeal. Evidence reviews, including Cochrane, support the finding that standardised packaging reduces appeal. Novel products

should not keep branding intensity simply because they fall outside traditional cigarette packaging norms.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

954. **Clauses 20 and 21 (digital and indirect advertising and promotion):** Expand into a full-spectrum ban on tobacco advertising, promotion and sponsorship covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, promotional competitions and point-of-sale visibility.

Justification: This should be treated as a modern Article 13 clause, not a narrow social-media amendment. The industry now markets through creators, events, sponsorship, discounts, product seeding and hashtag campaigns. A partial digital ban will be outpaced, and Article 13 guidance favours a comprehensive ban because partial bans merely displace promotion from one channel to another.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

955. **Clauses 22 and 24 (smoke-free places and designated smoking areas):** Delete the designated smoking area exception and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor smoke-free perimeters around schools, hospitals, playgrounds and public-building entrances. In the alternative, if designated smoking areas are retained, remove aircraft from any place where one may be allowed.

Justification: This is where the Bill still falls below best practice. The Article 8 guidelines are categorical: there is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Once e-cigarettes and heated products are included, designated rooms also create an enforcement fiction because aerosol drift and worker exposure remain. If designated areas are retained, none should be permitted on aircraft.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

956. **Clause 24 (section 35(2)(b)(iii): certification of designated smoking areas):** If designated smoking areas are retained, require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: Certification by an engineer addresses design only. County public health officers are responsible for inspection and enforcement of public-health standards, and approval and inspection fees ensure continuing compliance.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

957. **Clause 19 (proposed section 21B: single-use plastics and disposable products):** Retain and strengthen by expressly banning disposable vapes as a product class, imposing take-back and producer-responsibility obligations for batteries and device waste, and authorising seizure and destruction of non-compliant stock.
Justification: This is a strong environmental-health clause. Disposable vapes are engineered for cheap uptake, concealability and repeat purchase and create an avoidable stream of plastic, metal, lithium-battery and nicotine waste. The United Kingdom has banned single-use vapes and Belgium has banned the sale of disposable e-cigarettes. Take-back and producer-responsibility obligations and seizure powers make the clause enforceable rather than symbolic.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

958. **New section 21C (shisha):** Insert a new section prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of up to KES 5 million or imprisonment for up to three years, or both.
Justification: A ban on shisha in the Act, rather than only in regulations under the Public Health Act, allows a higher and sufficiently deterrent penalty and further protects young people from shisha use. It complements the proposed definitions of shisha.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

959. **Clause 26 (section 53: regulation-making power):** Expand section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardised packaging rules and an express bar on delegating state regulatory functions to the tobacco industry.

Justification: Section 53 should be the Bill's enforcement engine. The more clearly Parliament authorises disclosure, traceability, recall, seizure, packaging and supply-chain controls, the harder it will be to challenge later regulations as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking and tracing as state functions, and an express non-delegation clause avoids the conflict that Article 5.3 seeks to prevent.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act. The Committee further resolved that no regulatory or enforcement function of the State shall be delegated to the tobacco industry, in line with Article 5.3 of the WHO FCTC and the Protocol to Eliminate Illicit Trade in Tobacco Products.

68) Talk to Save the Youth Organisation submitted as follows:

960. **Clause 7 (solatium compensatory contribution):** Provide a statutory floor of not less than 2% of the ex-factory or import value of all tobacco and nicotine products, collected into the Tobacco Control Fund, with annual public reporting of collections and use.

Justification: A statutory floor would create a predictable, industry-funded resource for tobacco control at national and county levels.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

961. **Clause 7 (purposes of the Fund):** Expressly include public education, awareness creation, advocacy, and treatment of chronic illnesses caused by tobacco use (cancers, cardiovascular and respiratory diseases) as allowable expenditure.

Justification: Tobacco use is a leading cause of cancer, cardiovascular and chronic respiratory disease, and the Fund should meet the cost of awareness and treatment as well as enforcement.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

962. **Clause 7 (allocation to civil society):** Allocate not less than 15% of annual disbursements from the Fund to Kenyan civil society and non-governmental organisations for community-based tobacco control programmes, public education and advocacy.

Justification: Civil society plays a critical role in awareness, monitoring and community mobilisation and should not be left unfunded.

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

963. **Clause 26 (regulations on disbursement):** Require the Cabinet Secretary to prescribe clear criteria, application, vetting and disbursement procedures for civil society organisations, ensuring geographic equity and accountability.
Justification: Transparent criteria ensure geographic equity and accountability in the use of the Fund.
Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

964. **Clause 3 and Clause 12 (proposed section 14B)**: Ban the manufacture, marketing, distribution and sale of nicotine pouches.
Justification: Pouch use is relatively low among adult smokers but high among university students who have low smoking rates (6.2% of adults and 4.2% of university students). Their introduction is a deliberate move by industry to target youth, adolescents and children, who are particularly vulnerable to nicotine addiction and its effect on the developing brain. A ban would protect children and adolescents who currently have low rates of use.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

965. **New section 21C (shisha):** Ban the manufacture, marketing, sale and distribution of shisha products.
Justification: Shisha is currently addressed only under regulations made under the Public Health Act. Including it in the Tobacco Control Act allows a higher, sufficiently deterrent fine and further protects young people from shisha use.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

966. **Clause 13 (section 15: access by minors):** Increase the distance within which marketing and sale are not allowed from 100 to 300 metres and increase the age below which minors may not access tobacco products from 18 to 21 years.
Justification: This would bring tobacco control law into line with proposed alcohol control law that also provides for 300 metres and 21 years and would ease enforcement. The adolescent brain continues to develop until about the age of 25, so raising the age to 21 gives a further three years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would

operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years. The Committee did not adopt the proposal to increase the age of eighteen years, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

69) Kajiado County NCDs Chapter submitted as follows:

967. **Clause 10 (tax and price policies):** Support the provisions on taxation and pricing; higher tobacco taxes discourage use and generate revenue for the prevention and treatment of non-communicable diseases.
Justification: Tobacco-related illness costs Kenya Ksh 45 billion annually in treatment and lost productivity. For Kajiado's pastoral and semi-urban economy this translates into lost livelihoods and reduced household income.
Committee Resolution: The Committee noted the support. Clause 10 is retained, requiring periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

968. **Clause 18 (health warnings and plain packaging):** Support the enlarged warnings (75% of packaging) and plain packaging.
Justification: Enlarged warnings and plain packaging reduce the appeal of the product.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

969. **Clauses 17 and 19 (licensing and registration):** Support stronger oversight, through licensing and registration, of tobacco and nicotine products.
Justification: Stronger oversight prevents harmful, unregulated products from flooding the market, and gives counties a direct role in enforcement.
Committee Resolution: The Committee noted the support for retention of the licensing and registration requirements.

970. **Clause 13 (section 15: access by minors):** Increase the minimum age from 18 to 21 years and expand the sales buffer around schools from 100 to 300 metres.
Justification: Adolescents and university students are increasingly targeted by flavoured nicotine products and online marketing, and the proposals strengthen child protection.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises

primarily serving persons under eighteen years. The Committee did not adopt the proposal to increase the age of eighteen years, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

971. **Clause 5 (Tobacco Control Advisory Committee) and county role:** Support the role given to counties in tobacco control policy-making and enforcement.
Justification: In Kajiado, where access to specialised healthcare is limited, counties should be able to influence directly the measures that protect their communities.
Committee Resolution: The Committee noted the support. The seat for counties on the Board, through the Council of Governors, and the role of counties in licensing are retained.

972. **Clauses 12 and 16 (flavours, online sales and youth-appealing designs):** Support the ban on flavours, online sales and youth-appealing designs.
Justification: Youth are increasingly targeted by flavoured nicotine products and online marketing, and the bans reduce the risk of addiction.
Committee Resolution: The Committee noted the support and retained section 14J, section 19A and the prohibition of youth-appealing designs in section 15.

973. **Clause 19 (proposed section 21B: single-use plastics):** Support the prohibition of single-use plastics in tobacco products.
Justification: The prohibition aligns with Kajiado's environmental priorities, protecting grazing lands and water sources.
Committee Resolution: The Committee noted the support and retained section 21B.

70) Women for Cancer Early Detection and Treatment (Women 4 Cancer) submitted as follows:

974. **Clause 2:** Amend the long title to read "An Act of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

975. **Clause 3 (definition of "ingredients"):** Retain the expanded definition but add "constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use", and require disclosure of device-component emissions.
Justification: For novel nicotine products the main risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents matter.

Regulating contents and emissions aligns the Bill with modern product regulation and makes later standards on testing, approval and recall legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations include what the user is actually exposed to.

976. **Clause 3 (definition of "advertisement"):** Reject the replacement definition; retain the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics".

Justification: A shorter replacement definition risks narrowing the existing coverage of advertising and promotion. The existing broad definition, supplemented by promotion through brand characteristics, is consistent with Article 13 of the WHO FCTC and prevents indirect marketing through brand imagery.

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

977. **Clause 3 (new definitions):** Insert definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha" and "shisha smoking".

Justification: Intended to close interpretive gaps and support enforcement of the packaging, flavour and shisha provisions.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area", "shisha" and "shisha smoking" to give effect to section 14J and Clauses 18 and 23.

978. **Clause 3 (definition of "smoking"):** Retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not and whether visible or invisible.

Justification: Closes the loophole under which sellers market products as nicotine-free or "herbal" and argue that smoke-free protections do not apply. WHO states that e-cigarette emissions contain nicotine and other toxic substances harmful to users and non-users. A technology-neutral definition future-proofs the Act against new devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

979. **Clause 3 (definitions of "tobacco product" and "characterising flavour"):** Retain and strengthen by defining nicotine analogues functionally and extending "characterising flavour" to cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry practice includes chemical reformulation, branding tricks and non-traditional descriptors that preserve youth appeal while formally avoiding a named flavour. A narrow definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours". WHO and the FCTC Secretariat have called for bans on ingredients that increase attractiveness and palatability; a functional definition supports enforcement against look-alike products.

Committee Resolution: The Committee adopted the proposal in part. The inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

980. **Clause 5 (Tobacco Control Advisory Committee):** Remove the KNCCI/business representative seat; add mandatory public disclosure of interests, minutes, agendas and all meetings with industry; prohibit gifts, partnerships and non-essential interactions; and require recusals backed by sanctions.

Justification: The business seat is a structural weakness. The tobacco industry has a direct commercial interest in weakening demand-reduction measures, and Article 5.3 of the WHO FCTC requires protection of public health policy from the commercial and other vested interests of the tobacco industry. The conflict-of-interest wording is useful but insufficient if the Committee still institutionalises an industry-adjacent nomination route. The safer model is to remove the seat and legislate transparency, limited interactions and enforceable recusals.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

981. **Clause 5 (expert member):** Amend to "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health" in place of nomination by the Council of Governors.

Justification: Same justification as above: nominations to the Committee should rest with the Cabinet Secretary for Health, who is responsible for health policy and for protecting the Committee from conflicts of interest.

Committee Resolution: The Committee did not adopt the proposal. The nomination of the expert member by the Council of Governors is retained, as it gives effect to the role of counties in public health and tobacco control under the Fourth Schedule to the Constitution and to the principle of consultation and cooperation between the two levels of government.

982. **Clause 5 (NGO representative):** Amend to require nomination of the representative of non-governmental organisations involved in tobacco control by the Cabinet Secretary for Health.
Justification: Same justification as above: nomination by the Cabinet Secretary for Health ensures the representative is independent of industry-linked groups.
Committee Resolution: The Committee did not adopt the proposal. The nomination of the representative of non-governmental organisations remains as provided in the Bill. The Committee noted the need for a transparent and competitive selection process.

983. **Clause 7 (solatium compensatory contribution):** Insert a statutory floor of not less than 2% of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and require annual publication of collections and use of the Fund.
Justification: Leaving the contribution open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in its regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment, and annual public reporting ties the Fund visibly to health protection.
Committee Resolution: The Committee did not adopt a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

984. **Clause 7 (purposes of the Fund):** Amend section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support.
Justification: The Act and the Bill do not explicitly fund public awareness, civil-society-led community programmes or treatment of tobacco-related disease. Counties and civil society have enforcement and education roles but no dedicated funding, and treatment costs are left uncovered, which is at odds with the right to health under Article 43. The amendment also aligns with Article 12 of the WHO FCTC (education, communication, training and public awareness).
Committee Resolution: The Committee did not adopt the proposal. Section 7(4) already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

985. **Clause 7 (disbursement of the Fund):** Insert a new subsection providing for regulations by the Cabinet Secretary on disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumber the current subsection (5) as subsection (6).

Justification: The Fund is a sector-specific statutory fund and the Act vests regulatory authority in the Cabinet Secretary for Health, who is best placed to prescribe eligibility, reporting and accountability. Without express regulatory authority, the Fund risks being inaccessible to smaller or county-based organisations. A clear framework ensures transparency, prevents capture and satisfies the Public Finance Management Act requirements for fair and accountable disbursement of public funds. Enforcement of tobacco control is a devolved function, yet the Ministry of Health is not devolving Fund resources to counties.

Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients, **in accordance with the Public Finance Management Act, Cap. 412A.**

986. **Clause 10 (tax and price policies): Retain** and strengthen by requiring that tobacco taxes move to at least 75% of retail price, with annual adjustment for inflation and income growth, and expressly earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats taxes above 75% of retail price as the highest standard and stresses the need to maintain affordability pressure over time. Unless taxes are indexed to inflation and income growth, products become cheaper in real terms and youth access rises. Earmarking revenue answers an implementation problem: strong laws fail when enforcement, cessation and surveillance are unfunded.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

987. **Clause 12 (proposed section 14A: electronic nicotine delivery systems):** Prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets and a nicotine cap of not more than 10 mg/mL.

Justification: The present text normalises market entry for an addictive product class whose public-health risks remain substantial. WHO states that e-cigarettes are harmful and not safe, expose bystanders to harmful aerosol and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU framework (20 mg/mL, 10 mL, 2 mL) is a minimum floor, not a best-practice ceiling, and the United Kingdom and Belgium have prohibited disposable vapes. In the alternative, only reusable closed systems, tobacco flavour

only, no disposable devices, no internet sales, adult-only licensed outlets and a nicotine cap of not more than 10 mg/mL should be permitted.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

988. **Clause 3 (definition of "nicotine pouch") and Clause 12 (proposed section 14B), with consequential references in Clauses 16 and 23:** Retain the definition but replace section 14B with an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch", with a fine of up to one million shillings or imprisonment for up to two years, or both, and delete the consequential references that assume lawful sale. In the alternative, regulate pouches like tobacco products with flavours banned, plain packaging, no displays or online sales and a cap of not more than 4 mg per pouch.

Justification: A prohibition model is preferable because nicotine pouches are discreet oral products that are easy to conceal and to use in smoke-free spaces and are often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified pouches as emerging products that create serious regulatory challenges, often promoted as "tobacco-free", and has called for urgent action on flavours. Prevalence is low among adult smokers (6.2% of adults) but high among university students (4.2%) who smoke less, which indicates targeting of young people. In the alternative, if pouches are not prohibited, they should be regulated like tobacco products, with flavours banned, plain packaging, no displays or online sales and a lower nicotine cap of not more than 4 mg per pouch in place of the 20 mg proposed.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

989. **Clause 12 (proposed sections 14C–14I: approval, testing, listing and bans):** Retain and strengthen by requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval or refusal, and a clear appeal and recall process.

Justification: This is one of the strongest provisions of the Bill and should be defended. A product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and compliance before market entry and throughout the product life cycle, and independent testing is essential because industry-submitted claims on ingredients and

emissions are not self-verifying. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

990. **Clause 12 (proposed section 14J:** additives and characterising flavours): Retain and strengthen by expressly covering menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation across all tobacco and nicotine products.

Justification: This clause is a core youth-protection measure. WHO and the FCTC Secretariat call for urgent action against flavours and other design features that increase attractiveness and palatability. Partial bans are easily evaded through cooling additives, ambiguous descriptors, accessories and device design, so a comprehensive ban must be based on sensory effect and not merely on names.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

991. **Clause 13 (section 15: youth-appealing designs and sales buffer):** Retain the design prohibition and, in section 15(5A), increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children.

Justification: The design ban is sound. The 100-metre distance is too low for practical enforcement in dense urban settings and does not adequately reduce the visibility and availability of tobacco and nicotine products around children. Kenya already applies a 300-metre public-health buffer in alcohol-control law for learning institutions, and using the same benchmark improves coherence in child-protection legislation.

Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

992. **Clause 13 (minimum age):** Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".

Justification: Raising the age to twenty-one brings tobacco control into line with the proposed alcohol-control law and eases enforcement. The adolescent brain continues to develop until about the age of 25, so raising the age of access to twenty-one gives a further

three years of protection from nicotine addiction. This is an additional amendment, as these subsections are not amended by the Bill.

Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

993. **Clause 16 (proposed section 19A: online sales):** Retain and strengthen by imposing duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: A simple ban is necessary but not sufficient. Online tobacco and vape commerce shifts to social media, messaging channels, cross-border websites and intermediary platforms. Without platform obligations, traceability and takedown mechanisms enforcement is reactive and uneven. Belgium and the Netherlands treat online and cross-border sales as a core regulatory frontier; Kenya should legislate the enforcement chain and not only the prohibited act.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online. The Committee resolved that regulations shall require platform operators and payment and delivery service providers to cooperate with enforcement agencies, including the Communications Authority of Kenya, in removing unlawful listings.

994. **Clauses 17 and 19 (county licensing and national registration):** Retain the dual gatekeeping model but require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial-ownership disclosure, retailer-density controls and mandatory publication of suspensions and revocations.

Justification: County licensing plus national registration is defensible because it gives local and national authorities visibility over the supply chain. The risk is fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial-ownership disclosure and publication of licence outcomes help identify front companies and repeat offenders, consistent with the licensing and traceability logic of the Protocol to Eliminate Illicit Trade in Tobacco Products.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

995. **Clauses 18 and 23 (pack warnings, plain packaging and retail warnings):** Defend the 75% warning rule and plain-packaging power; extend large pictorial warnings and standardised packaging to ENDS and nicotine pouches; require a quitline message and a poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter signage at retail.

Justification: This is a major public-health gain and should not be diluted. Guidelines to Article 11 of the WHO FCTC treat large, clear and prominent warnings as essential and recognise plain packaging as a legitimate means of reducing product appeal. Evidence reviews, including Cochrane, support the finding that standardised packaging reduces appeal. Novel products should not keep branding intensity simply because they fall outside traditional cigarette packaging norms.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

996. **Clauses 20 and 21 (digital and indirect advertising and promotion):** Expand into a full-spectrum ban on tobacco advertising, promotion and sponsorship covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, promotional competitions and point-of-sale visibility.

Justification: This should be treated as a modern Article 13 clause, not a narrow social-media amendment. The industry now markets through creators, events, sponsorship, discounts, product seeding and hashtag campaigns. A partial digital ban will be outpaced, and Article 13 guidance favours a comprehensive ban because partial bans merely displace promotion from one channel to another.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

997. **Clauses 22 and 24 (smoke-free places and designated smoking areas):** Delete the designated smoking area exception and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor smoke-free perimeters around schools, hospitals, playgrounds and public-building entrances. In the alternative, if designated smoking areas are retained, remove aircraft from any place where one may be allowed.

Justification: This is where the Bill still falls below best practice. The Article 8 guidelines are categorical: there is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Once e-cigarettes and heated products are included, designated rooms also create an enforcement fiction because aerosol drift and worker exposure remain. If designated areas are retained, none should be permitted on aircraft.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict

engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

998. **Clause 24 (section 35(2)(b)(iii):** certification of designated smoking areas): If designated smoking areas are retained, require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: Certification by an engineer addresses design only. County public health officers are responsible for inspection and enforcement of public-health standards, and approval and inspection fees ensure continuing compliance.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

999. **Clause 19 (proposed section 21B: single-use plastics and disposable products):** Retain and strengthen by expressly banning disposable vapes as a product class, imposing take-back and producer-responsibility obligations for batteries and device waste, and authorising seizure and destruction of non-compliant stock.
Justification: This is a strong environmental-health clause. Disposable vapes are engineered for cheap uptake, concealability and repeat purchase and create an avoidable stream of plastic, metal, lithium-battery and nicotine waste. The United Kingdom has banned single-use vapes and Belgium has banned the sale of disposable e-cigarettes. Take-back and producer-responsibility obligations and seizure powers make the clause enforceable rather than symbolic.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1000. **New section 21C (shisha):** Insert a new section prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of up to KES 5 million or imprisonment for up to three years, or both.
Justification: A ban on shisha in the Act, rather than only in regulations under the Public Health Act, allows a higher and sufficiently deterrent penalty and further protects young people from shisha use. It complements the proposed definitions of shisha.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1001. **Clause 26 (section 53: regulation-making power):** Expand section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers,

seizure and destruction, environmental obligations, standardised packaging rules and an express bar on delegating state regulatory functions to the tobacco industry.

Justification: Section 53 should be the Bill's enforcement engine. The more clearly Parliament authorises disclosure, traceability, recall, seizure, packaging and supply-chain controls, the harder it will be to challenge later regulations as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking and tracing as state functions, and an express non-delegation clause avoids the conflict that Article 5.3 seeks to prevent.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act. The Committee further resolved that no regulatory or enforcement function of the State shall be delegated to the tobacco industry, in line with Article 5.3 of the WHO FCTC and the Protocol to Eliminate Illicit Trade in Tobacco Products.

71) The African Institute for Health and Development (AIHD) submitted as follows:

1002. **Amend the title of the Bill** to read: "An Act of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: AIHD submitted this brings the title in line with the substances and products expressly dealt with in the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

1003. **Amend Clause 3** (definition of "nicotine pouch" in section 2) by keeping and refining the definition for enforcement clarity, and delete references in Clauses 16 and 23 and elsewhere that assume pouches can be lawfully sold or displayed, including in the provisions on online sales and retail warnings, except where a reference is needed for seizure, enforcement or offence provisions.

Justification: AIHD submitted a prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to hide, easy to use in smoke-free places, and often sold in flavours and formats that raise youth appeal and the risk of addiction. It noted that WHO has identified pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free", which may mislead consumers about risk, and that WHO has called for urgent bans on flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and deepen dependence, especially among children and young people. Keeping a clear definition while banning the product closes loopholes, supports seizure and prosecution, and stops the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1004. **Amend Clause 3** (definition of "ingredients") by retaining the expanded definition, but expressly add "constituents, emissions, contaminants and by
products generated during heating, aerosolization, storage or use", and
require disclosure of device component emissions.
Justification: AIHD argued that the definition should go beyond the ingredients physically present in the product at the point of sale. For new nicotine products, the main risks come from what is produced during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition would let industry argue that only the liquid or pouch contents matter, even where the inhaled aerosol contains additional toxicants. It submitted that regulating both product contents and the disclosure of emissions and contaminants released in normal use matches modern product regulation and makes later standards on testing, approvals and recalls safer in law.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1005. **Amend Clause 3** to reject the shorter replacement definition of "advertisement", keep the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics."
Justification: No separate justification was given.
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1006. **Amend Clause 3** by inserting new definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha" and "shisha smoking".
Justification: AIHD submitted the new definitions are intended to close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1007. **Amend Clause 3** (definition of "smoking") by keeping the revised definition but making it explicit that it covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.
Justification: AIHD submitted the definition should close the common loophole where sellers market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. It noted the WHO position that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed

as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1008. **Amend Clause 3** (definitions of "tobacco product" and "characterising flavour") by keeping them but defining nicotine analogues functionally,
and by extending "characterising flavour" to include cooling agents, , sweetness enhancers, sensory effects and descriptors such as "ice", "fresh", "cool", "chill" and "smooth" or similar words.

Justification: AIHD submitted industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for bans on ingredients that increase attractiveness and palatability. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1009. **Amend Clause 5** on the Tobacco Control Advisory Committee by removing the seat for a Kenya National Chamber of Commerce and Industry or business representative, and adding mandatory public disclosure of interests, minutes, agendas and all meetings with industry, a ban on gifts, partnerships and non-essential contact, and recusals backed by sanctions. Amend the seat for a person with tobacco expertise, now nominated by the Council of Governors, to read: "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health." Require the Cabinet Secretary for Health to nominate the person representing non-governmental organisations.

Justification: AIHD called the business seat a structural weakness. It argued that tobacco control is not an ordinary sector, because the tobacco industry has a direct commercial interest in weakening measures that reduce demand. It noted that Article 5.3 of the FCTC requires public health policies to be protected from the commercial and other vested interests of the tobacco industry. The conflict-of-interest wording in the Bill is useful but not enough if the Committee still has a seat with an industry link. The safer course is to remove the seat and to write transparency, limited interactions and enforceable recusals into the law. It added

that the Supreme Court has already upheld strong tobacco control regulations, including limits on contact between public authorities and the industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1010. **Amend Clause 7** (solatium, or compensatory, contribution) by setting a statutory floor of not less than 2 per cent of the ex-factory value or import value of tobacco and nicotine products, with power to set a higher rate by regulation, and by requiring annual publication of collections and of how the Tobacco Control Fund is used. Amend section 7(4) to state expressly that the Fund covers research, cessation and rehabilitation, public education and awareness, and enforcement support. Insert a new subsection providing for regulations on disbursement of the Fund by the Cabinet Secretary, under the Tobacco Control Act, to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumber the present subsection (5) as subsection (6).

Justification: AIHD submitted that leaving the amount of the contribution open invites lobbying and leaves the Fund open to under-financing. It noted that Kenya already has a workable 2 per cent benchmark in its regulatory history, and that the Supreme Court upheld the wider tobacco control framework and rejected the claim that the solatium was unconstitutional as such. A floor gives predictability for prevention, cessation, enforcement and treatment of tobacco-related disease, and leaves less room for the rate to be watered down through administrative pressure. Public reporting is needed so that the Fund is visibly tied to health protection and is not treated as a negotiable levy. On disbursement, AIHD submitted the Fund is a statutory fund set up under the Tobacco Control Act, run within the health framework and aimed at research, cessation, public education and enforcement. Because the Act already places implementation and regulation in the health sector, the Cabinet Secretary for Health is the most suitable authority to set the criteria, eligible recipients, reporting duties and accountability safeguards, while the Fund stays subject to the wider public finance framework.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society

organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

1011. **Amend Clause 10** (tax and price policies) by keeping and strengthening it: require that tobacco taxes rise to at least 75 per cent of the retail price, with yearly adjustment for inflation and income growth, and set aside a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: AIHD submitted taxation is the single most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. It noted that WHO treats taxes above 75 per cent of the price as the highest standard and stresses the need to keep up pressure on affordability over time. If taxes are not linked to both inflation and income growth, products become cheaper in real terms and access by young people rises. Earmarking revenue also answers an implementation problem, since strong laws fail when enforcement, cessation and monitoring go unfunded.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1012. **Amend Clause 12** (new section 14A on ENDS and e-cigarettes) by taking the strongest public health position: prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems (ENDS and ENNDS) as consumer products. In the alternative, if Parliament keeps them, allow only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, sale only through licensed adult-only outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: AIHD argued that the present text normalizes market entry for an addictive product class whose public health risks remain substantial. It noted the WHO position that e-cigarettes are harmful and not safe, expose bystanders to harmful aerosol, and are linked to much higher uptake of conventional cigarettes among non-smoking youth. It submitted the European Union limits (20 mg/mL, 10 mL and 2 mL) are a minimum, not a best-practice ceiling, that several developed countries have gone further by restricting flavours, sales channels or device types, and that both the United Kingdom and Belgium have banned disposable vapes. Kenya should not lock a permissive baseline into primary legislation.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee

noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1013. **Amend Clause 12** (new section 14B on nicotine pouches) by deleting the section, which now allows pouches subject to child-proofing, dose consistency and a cap of 20 mg per pouch, and replacing it with: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who breaks this rule would commit an offence punishable by a fine of up to one million shillings, imprisonment of up to two years, or both. In the alternative, if pouches are not prohibited, regulate them exactly like tobacco products, ban flavours, require plain packaging, prohibit displays and online sales, and cut the maximum nicotine content to not more than 4 mg per pouch.

Justification: AIHD submitted nicotine pouches are designed for discreet use, are easy to hide, and are sold in flavours and formats that strongly appeal to adolescents and young adults. It argued that high-dose pouches speed up dependence and give a false image of a cleaner, lower-risk product, even though the risk of addiction remains substantial. It noted research showing that a sizeable minority of young adults are willing to try nicotine pouches, and that exposure to advertising and favourable perceptions are major drivers of use. If Parliament does not ban pouches, it should at least refuse a 20 mg cap and regulate them as strictly as other nicotine products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1014. **Amend Clause 12** (new sections 14C to 14I on approval, testing, listing and bans) by keeping and strengthening them, requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approving or refusing a product, and a clear appeal and recall process.

Justification: AIHD called this one of the strongest parts of the Bill, which should be defended. However, a product approval regime without public reasons and independent verification can still be captured or become opaque. The burden should stay on the manufacturer to prove safety, conformity and legal compliance before a product enters the market and throughout its life. A public register supports consumer protection, customs enforcement and county licensing, and independent testing is especially important for the novel nicotine products because industry submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1015. **Amend Clause 12** (new section 14J on additives and characterising flavours) by keeping and strengthening it so that it expressly covers menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.

Justification: AIHD submitted this clause should be defended as a core youth protection measure. WHO and the FCTC Secretariat now openly call for urgent action against flavours and other design features that make products more attractive and easier to use. Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. A comprehensive ban must therefore be based on sensory effect and not merely on names. It noted that the Netherlands' move to tobacco-flavour-only e-liquids and Belgium's move toward tighter vape controls show that developed countries are moving in the same direction.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1016. **Amend Clause 13** (section 15 on youth-appealing designs and the sales buffer) by keeping the design prohibition and increasing the minimum sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children, and by replacing "eighteen" with "twenty-one" in section 15(1), (3), (5)(a), (5)(b) and (5A).

Justification: AIHD submitted the design ban is sound and should be preserved. The distance buffer, however, is too low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children. Kenya

already recognizes a 300-metre public-health buffer in alcohol-control law for learning institutions. Using the same benchmark here improves coherence in child protection legislation and gives administrators and

courts a familiar standard. A wider buffer also reduces retailer clustering and the routine normalization of nicotine products near schools.

Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

1017. **Amend Clause 16** (new section 19A on online sales) by keeping and strengthening it, so that platform operators, payment intermediaries and delivery services must remove or block unlawful listings, keep transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: AIHD submitted a simple ban is necessary but not enough. Online sales of tobacco and vapes often move to social media, messaging channels, cross-border websites and intermediary platforms, and without duties on platforms, traceability and takedown rules, enforcement is reactive and uneven. It noted that Belgium reports strong enforcement against unlawful online vape sales, and that the Netherlands bans cross-border online sales of tobacco and e-cigarette products. Kenya should legislate the whole enforcement chain and not only the banned act.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1018. **Amend Clauses 17 and 19** (county licensing of premises and national registration of dealers) by keeping both, but requiring a unified digital application portal, harmonised data-sharing, annual renewal, disclosure of beneficial ownership, controls on how many retailers may operate in an area, and mandatory publication of suspensions and revocations.

Justification: AIHD submitted having both county licensing and national registration is defensible, because it gives local and national authorities a view of the whole supply chain. The risk is fragmentation, duplication and forum-shopping unless the law requires information-sharing and joint administration. Disclosure of beneficial ownership and publication of licence decisions help to identify front companies, repeat offenders and retail networks linked to industry. This also fits the supply-chain controls in the Illicit Trade Protocol, which treats licensing, record-keeping and traceability as core tools against diversion.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

1019. **Amend Clauses 18 and 23** (pack warnings, plain packaging and retail warnings) by defending the 75 per cent warning rule and the power to require plain packaging, extending large pictorial warnings and standardised packaging to ENDS and nicotine pouches, requiring a quitline or cessation message and a poison warning for liquid nicotine, and prohibiting any branded display or menu-board style counter signage at retail.

Justification: AIHD called this a major public health gain that should not be watered down in the National Assembly. It noted that WHO guidance under Article 11 of the FCTC treats large, clear and prominent warnings as essential and accepts plain packaging as a legitimate way to reduce a product's appeal and stop the pack from acting as advertising. Evidence reviews, including Cochrane, support the view that standardised packaging reduces appeal and may help lower smoking rates. New products should not keep strong branding just because they sit outside the usual cigarette packaging rules.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings

including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1020. **Amend Clause 19** (new section 21B on single-use plastics and disposable products) by keeping and strengthening it: expressly ban disposable vapes as a class of product, require take-back and producer-responsibility duties for batteries and device waste, and allow seizure and destruction of non-compliant stock.
Justification: AIHD called this a strong environmental health clause that should be defended. It submitted disposable vapes are built for cheap uptake, easy concealment and repeat purchase, and create avoidable plastic, metal, lithium-battery and nicotine waste. It noted that the United Kingdom bans single-use vapes and Belgium has banned the sale of disposable e-cigarettes. Kenya should state the environmental reason clearly and link it to health enforcement powers, so that the clause is not reduced to a symbolic waste measure.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1021. **Amend Clauses 20 and 21** (digital and indirect advertising and promotion) by expanding them into a full ban on tobacco advertising, promotion and sponsorship (TAPS), covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and visibility at the point of sale.
Justification: AIHD submitted this should be treated as a modern Article 13 clause and not a narrow social media amendment. Industry now markets through creators, event culture, sponsorship, discounts, product seeding, hashtag campaigns and indirect brand extension, so a partial digital ban would be outpaced almost at once. The Article 13 guidelines favour a comprehensive ban because partial bans only move promotion from one channel to another. It added that the WHO 2025 campaign focused on how flavours, design and marketing tactics are used to addict young people and make nicotine use seem normal.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1022. **Amend Clauses 22 and 24** (smoke-free places and designated smoking areas) by deleting the designated smoking area (DSA) exception entirely and requiring 100 per cent smoke-free and vape-free indoor and enclosed public places, workplaces, public transport and hospitality venues, with set outdoor smoke-free and vape-free perimeters around schools, hospitals, playgrounds and public building entrances. In the alternative, if DSAs are kept, remove aircraft from any place where a DSA may be allowed, and amend section 35(2)(b)(iii) so that a DSA

needs approval by the county public health officer, with inspection and approval fees, as well as certification by a qualified engineer.

Justification: AIHD called this the clearest place where the Bill still falls short of best practice. It submitted the Article 8 guidelines are firm that there is no safe level of exposure to tobacco smoke, and that ventilation, filtration and designated rooms do not protect people effectively. Once ENDS and heated products are included, keeping designated rooms becomes an enforcement fiction, because aerosol drift, leakage and worker exposure remain. It noted that the Netherlands has rejected smoking rooms because they make smoking easier and normalise it. No separate justification was given for the alternative proposals on aircraft and on approval by the county public health officer.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1023. **Amend Clause 26 (section 53 on the power to make regulations)** by expanding it to allow track-and-trace, due diligence, caps on retailer density, mandatory record-keeping, public registers, seizure and destruction, environmental duties, rules on standardised packaging, and an express bar on handing state regulatory functions to the tobacco industry.

Justification: AIHD submitted section 53 should be written as the enforcement engine of the Bill. The more clearly Parliament authorises disclosure, traceability, recall, seizure, packaging and supply-chain controls, the harder it will be to challenge later regulations as beyond the law. It noted that the Illicit Trade Protocol treats licensing, record-keeping, due diligence, tracking and tracing as state functions, and submitted an express bar on delegation is prudent because industry-controlled tracing or compliance systems create the very conflict that Article 5.3 of the FCTC seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

1024. **Insert a new section 21C** prohibiting the manufacture, sale, distribution and importation of shisha products, with a penalty of up to KES 5 million, imprisonment of up to 3 years, or both.

Justification: AIHD submitted the new section complements the proposed new definitions of shisha. The Bill has no express prohibition on shisha products.

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

72) The Purple Heart Organization (Purple Heart) submitted as follows:

1025. **Amend the title of the Bill** to read: "An Act of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: Purple Heart submitted this brings the title in line with the products the Bill actually deals with.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

1026. **Amend Clause 3** (definition of "ingredients") by keeping the expanded definition but adding "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use", and by requiring disclosure of emissions from device components.

Justification: The Organization argued that the definition should go beyond what is physically in the product at the point of sale. For new nicotine products, the main risks come from what is produced during heating, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition would let industry argue that only the liquid or pouch contents matter. It submitted that covering both contents and the disclosure of emissions matches modern product regulation and makes later standards on testing, approvals and recalls safer in law.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1027. **Amend Clause 3** to reject the shorter replacement definition of "advertisement", keep the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics."

Justification: No separate justification was given.

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1028. **Amend Clause 3** by inserting new definitions of "aerosol, "flavouring agent", "plain packaging", "principal display area" "shisha" and "shisha smoking".

Justification: Purple Heart submitted the new definitions are intended to close gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1029. **Amend Clause 3** (definition of "smoking") by keeping the revised definition to include inhaling or exhaling smoke or vapour delivered through electronic means.

Justification: The Organization submitted the definition should close the loophole where sellers' market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. It noted the WHO position that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1030. **Amend Clause 3** (definitions of "tobacco product" and "characterising flavour") by keeping them but defining nicotine analogues by what they do, and by extending "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and descriptors such as "ice", "fresh", "cool", "chill" and "smooth" or similar words.

Justification: The Organization submitted industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for bans on ingredients that increase attractiveness and palatability. A functional definition reduces evasive product design and supports enforcement against lookalike reformulation.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1031. **Amend Clause 5** on the Tobacco Control Advisory Committee by deleting section 5A(1)(g), the seat for a nominee of the Kenya National Chamber of Commerce and Industry, and amending section 5A (2) to make clear that the remaining members are appointed by the Cabinet Secretary. Amend the seat for a person with tobacco expertise, now nominated by the Council of Governors, to read: "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health." Require the Cabinet Secretary for Health to nominate the person representing non-governmental organisations.

Justification: The Organization called the business seat a structural weakness. It argued that tobacco control is not an ordinary sector, because the tobacco industry has a direct commercial interest in weakening measures that reduce demand. It noted that Article 5.3 of

the FCTC requires public health policies to be protected from the commercial and other vested interests of the tobacco industry. The conflict-of-interest wording in the Bill is useful but not enough if the Committee still has a seat with an industry link. The safer course is to remove the seat and to write transparency, limited interactions and enforceable recusals into the law. It added that the Supreme Court has already upheld strong tobacco control regulations, including limits on contact between public authorities and the industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1032. **Amend Clause 7** (solatium, or compensatory, contribution) by setting a statutory floor of not less than 2 per cent of the ex-factory value or import value of tobacco and nicotine products, with power to set a higher rate by regulation, and by requiring annual publication of collections and use of Fund.

Justification: The Organization submitted that leaving the contribution entirely open-ended makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure. Public reporting is also necessary so the Fund is visibly tied to health protection rather than being treated as a negotiable levy.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

1033. **Amend Clause 7** by rewriting section 7(4) so that the Tobacco Control Fund is used for: (i) research, documentation and dissemination of information on tobacco and nicotine products; (ii) promoting national cessation and rehabilitation programmes; (iii) public education, awareness creation and advocacy on the health, economic and environmental harms of tobacco and nicotine products; (iv) treatment and management of chronic illnesses caused by tobacco use, including cancers, cardiovascular diseases and chronic respiratory diseases; (v) supporting community-based tobacco control programmes run by youth groups, faith-based organisations, civil society organisations and non-governmental organisations; and (vi) any other matter incidental to these. Insert a new section 7(4A) providing that not less than 15 per cent of the annual disbursements from the Fund be allocated to Kenyan civil society organisations and non-governmental organisations for tobacco control programmes, public education and advocacy.

Justification: The Organization submitted the current Act and the Bill drafted do not explicitly fund public awareness, CSO-led community programs, or treatment of tobacco-related diseases. This leaves major gaps: (1) Counties and civil society have enforcement and

education roles but no dedicated funding; (2) Treatment costs are not covered, contradicting the right to health (Constitution Article 43); (3) Without a minimum CSO allocation, grassroots advocacy and community monitoring remain under-resourced. The proposed amendments align with WHO FCTC Article 12 (education, communication, training) and Article 5.3 (protecting policies from industry interference by enabling independent civil society monitoring).

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

1034. **Amend Clause 10** (tax and price policies) by retaining and strengthening the requirement that tobacco taxes move to at least 75% of retail price, with annual adjustment for inflation and income growth; expressly earmark a defined share for tobacco control, cessation and NCD treatment.

Justification: The Organization submitted taxation is the single most effective and cost-effective way to reduce demand. A clause that only says taxes shall be reviewed points the right way but is too soft. It noted that WHO treats taxes above 75 per cent of the price as the highest standard and stresses the need to keep up pressure on affordability over time. If taxes are not linked to both inflation and income growth, products become cheaper in real terms and access by young people rises. Earmarking revenue also answers an implementation problem, since strong laws fail when enforcement, cessation and monitoring go unfunded.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1035. **Amend Clause 12** (new section 14A on ENDS and e-cigarettes) by adopting a public-health-maximal position: prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, if Parliament retains them, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets, and a lower nicotine cap of not more than 10 mg/mL.

Justification: The Organization argued that the present text normalizes market entry for an addictive product class whose public health risks remain substantial. It noted the WHO position that e-cigarettes are harmful and not safe, expose bystanders to harmful aerosol, and are linked to much higher uptake of conventional cigarettes among non-smoking youth. It submitted the European Union limits (20 mg/mL, 10 mL and 2 mL) are a minimum, not a best-practice ceiling, that several developed countries have gone further by restricting flavours,

sales channels or device types, and that both the United Kingdom and Belgium have banned disposable vapes. Kenya should not lock a permissive baseline into primary legislation.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1036. **Amend Clause 12** (new section 14B on nicotine pouches) by prohibiting non-therapeutic nicotine pouches. In the alternative, regulate them exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the maximum nicotine content to not more than 4 mg per pouch. Replace current 14(B) with the following: No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch. A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Justification: The Organization submitted nicotine pouches are designed for discreet use, are easy to conceal, and are marketed in flavours and formats that strongly appeal to adolescents and young adults. High-dose pouches accelerate dependence and create a misleading image of a cleaner, lower-risk product even though the addiction risk remains substantial. Research already shows that a sizeable minority of young adults are willing to try nicotine pouches and that advertising exposure and favourable perceptions are material drivers of use. If Parliament does not prohibit them, it should at minimum refuse a 20 mg cap and regulate them as strictly as other nicotine products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1037. **Amend Clause 12** (new sections 14C to 14I on approval, testing, listing and bans) by KEBS approving decisions, recall/withdrawal, a ban and a publication requirement for approved or banned products. Independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approving or refusing a product, and a clear appeal and recall process.

Justification: The Organization submitted that approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and legal compliance before market entry and throughout the product's life cycle. A public register supports consumer protection, customs enforcement and county licensing. Independent testing is especially important for

novel nicotine products because industry-submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1038. **Amend Clause 12** (new section 14J on additives and characterising flavours) on the Bill prohibiting youth-appealing designs and bars sales within 100 metres of places primarily serving persons under 18. The minimum age threshold remains 18 years in the affected provisions

Justification: The Organization submitted this clause should be defended as a core youth measure. WHO and the FCTC Secretariat now openly call for urgent action against flavours and other design features that make products more attractive and easier to use. Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. A comprehensive ban must therefore be sensory-effect.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1039. **Amend Clause 13** (section 15 on youth-appealing designs and should be preserved. The distance buffer was however submitted to be too low fby retaining the design prohibition and increasing the minimum sales buffer from 100metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children, and replacing "eighteen" with "twenty-one" in section 15(1), (3), (5)(a), (5)(b) and (5A), by replacing with "twenty-one"

Justification: The Organization submitted the design ban is sound and should be kept, but a 100-metre buffer is too small to enforce in dense urban areas and does not do enough to reduce the visibility and availability of products around children. Kenya already recognises a 300-metre buffer around learning institutions in its alcohol control law, and using the same benchmark makes child protection laws consistent and gives administrators and courts a familiar standard. A wider buffer also reduces clustering of retailers near schools.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1040. **Amend Clause 16** (new section 19A on online sales) by keeping and strengthening it, so that platform operators, payment intermediaries and delivery services must remove or block

unlawful listings, keep transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: The Organization submitted a simple ban is necessary but not enough. Online sales of tobacco and vapes often move to social media, messaging channels, cross-border websites and intermediary platforms, and without duties on platforms, traceability and takedown rules, enforcement is reactive and uneven. It noted that Belgium reports strong enforcement against unlawful online vape sales, and that the Netherlands bans cross-border online sales of tobacco and e-cigarette products. Kenya should legislate the whole enforcement chain and not only the banned act.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1041. **Amend Clauses 17 and 19** (county licensing of premises and national registration of dealers) by retaining the dual public-health gatekeeping model, but require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.

Justification: The Organization submitted having both county licensing and national registration is defensible, because it gives local and national authorities a view of the whole supply chain. The risk is fragmentation, duplication and forum-shopping unless the law requires information-sharing and joint administration. Disclosure of beneficial ownership and publication of licence decisions help to identify front companies, repeat offenders and retail networks linked to industry. This also fits the supply-chain controls in the Illicit Trade Protocol, which treats licensing, record-keeping and traceability as core tools against diversion.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

1042. **Amend Clauses 18 and 23** (pack warnings, plain packaging and retail warnings) by defending the 75 per cent warning rule and the power to require plain packaging, extending large pictorial warnings and standardised packaging to ENDS and nicotine pouches, requiring a quitline or cessation message and a poison warning for liquid nicotine, and prohibiting any branded display or menu-board style counter signage at retail.

Justification: The Organization called this a major public health gain that should not be watered down in the National Assembly. It noted that WHO guidance under Article 11 of the FCTC treats large, clear and prominent warnings as essential and accepts plain packaging as a legitimate way to reduce a product's appeal and stop the pack from acting as advertising. Evidence reviews, including Cochrane, support the view that standardised packaging reduces appeal and may help lower smoking rates. New products should not keep strong branding just because they sit outside the usual cigarette packaging rules.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems

as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1043. **Amend Clause 19** (new section 21B on single-use plastics and disposable products) by keeping and strengthening it: expressly ban disposable vapes as a class of product, require take-back and producer-responsibility duties for batteries and device waste, and allow seizure and destruction of non-compliant stock.
Justification: The Organization called this a strong environmental health clause that should be defended. It submitted disposable vapes are built for cheap uptake, easy concealment and repeat purchase, and create avoidable plastic, metal, lithium-battery and nicotine waste. It noted that the United Kingdom bans single-use vapes and Belgium has banned the sale of disposable e-cigarettes. Kenya should state the environmental reason clearly and link it to health enforcement powers, so that the clause is not reduced to a symbolic waste measure.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1044. **Amend Clauses 20 and 21** (digital and indirect advertising and promotion) by expanding them into a full ban on tobacco advertising, promotion and sponsorship (TAPS), covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and visibility at the point of sale.
Justification: The Organization submitted this should be treated as a modern Article 13 clause and not a narrow social media amendment. Industry now markets through creators, event culture, sponsorship, discounts, product seeding, hashtag campaigns and indirect brand extension, so a partial digital ban would be outpaced almost at once. The Article 13 guidelines favour a comprehensive ban because partial bans only move promotion from one channel to another. It added that the WHO 2025 campaign focused on how flavours, design and marketing tactics are used to addict young people and make nicotine use seem normal.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1045. **Amend Clauses 22 and 24** (smoke-free places and designated smoking areas) by deleting the designated smoking area (DSA) exception entirely and requiring 100 per cent smoke-free and vape-free indoor and enclosed public places, workplaces, public transport and hospitality venues, with set outdoor smoke-free and vape-free perimeters around schools, hospitals, playgrounds and public building entrances. In the alternative, if DSAs are kept, remove aircraft from any place where a DSA may be allowed, and amend section 35(2)(b)(iii) so that a DSA

needs approval by the county public health officer, with inspection and approval fees, as well as certification by a qualified engineer.

Justification: The Organization called this the clearest place where the Bill still falls short of best practice. It submitted the Article 8 guidelines are firm that there is no safe level of exposure to tobacco smoke, and that ventilation, filtration and designated rooms do not protect people effectively. Once ENDS and heated products are included, keeping designated rooms becomes an enforcement fiction, because aerosol drift, leakage and worker exposure remain. It noted that the Netherlands has rejected smoking rooms because they make smoking easier and normalise it.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1046. **Amend Clause 26** (section 53 on the power to make regulations) by expanding it to allow track-and-trace, due diligence, caps on retailer density, mandatory record-keeping, public registers, seizure and destruction, environmental duties, rules on standardised packaging, and an express bar on handing state regulatory functions to the tobacco industry. Insert a new section 53(2)(f) requiring the Cabinet Secretary to prescribe the criteria, application procedure, vetting process, reporting duties and disbursement methods for funding to non-governmental and civil society organisations engaged in tobacco control, including accountability, audit and geographic equity.

Justification: The Organization submitted section 53 should be written as the enforcement engine of the Bill. The more clearly Parliament authorises disclosure, traceability, recall, seizure, packaging and supply-chain controls, the harder it will be to challenge later regulations as beyond the law. It noted that the Illicit Trade Protocol treats licensing, record-keeping, due diligence, tracking and tracing as state functions, and submitted an express bar on delegation is prudent because industry-controlled tracing or compliance systems create the very conflict that Article 5.3 of the FCTC seeks to avoid. On the new section 53(2)(f), it submitted that without clear regulatory authority the Fund risks becoming out of reach for smaller or county-based civil society groups. A clear framework supports transparency, prevents political capture, allows the 15 per cent allocation to work in practice, and meets the Public Finance Management Act requirements for fair, competitive and accountable disbursement of public funds.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

1047. **Insert a new section 21C** prohibiting the manufacture, sale, distribution and importation of shisha products, with a penalty of up to KES 5 million, imprisonment of up to 3 years, or both.

Justification: Purple Heart noted that the Bill has no express ban on shisha and that shisha is now banned only under Regulations made under the Public Health Act. It submitted the new

section complements the proposed new definitions of shisha. Placing the ban in the Tobacco Control Act would allow a higher fine, high enough to deter offenders, and would further protect young people from shisha use.

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

73) Women for Cancer Early Detection and Treatment (Women 4 Cancer), in a separate memorandum, submitted as follows:

1048. **Amend the title of the Bill** to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes

Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

1049. **Amend Clause 3** (section 2 definition of "nicotine pouch"); Clause 12 (proposed section 14B); and consequential references in Clauses 16 and 23 and any other clause that regulates, permits or assumes lawful sale of nicotine pouches

Justification: A prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to conceal, easy to use in smoke-free spaces, and often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified nicotine pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk. WHO has also called for urgent action to ban flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and entrench dependence, especially among children and young people. Retaining a clear definition while prohibiting the product closes loopholes, supports seizure and prosecution, and prevents the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1050. **Amend Clause 3** (definitions: "ingredients") The Bill expands "ingredients" to cover substances added during manufacture or arising from agricultural practices, including substances used in aerosol or vapour creation and materials migrating from packaging. By retaining the expanded definition, but expressly add "constituents, emissions, contaminants and by products generated during heating, aerosolization, storage or use", and require disclosure of device component emissions.

Justification: The organisation submitted that this should be widened beyond ingredients physically present in the product at the point of sale. For novel
nicotine products, major risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the bottled liquid or pouch contents matter, even where the actual inhaled aerosol contains additional toxicants. The better approach is to regulate both product contents and product disclosures, including emissions and contaminants released in normal use. That aligns the Bill with modern product regulation practice and makes later standards on
testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1051. **Amend Clause 3** definition of "advertisement": The Bill introduces a shorter new definition of advertisement. By rejecting the replacement definition and retaining the existing broad definition and adding a new limb: "promotion of a tobacco product by means of its brand characteristics."

Justification: No justification offered

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1052. **Amend Clause 3** new definitions the replacement definition: Insert new definitions for "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha", and "shisha smoking". This will better explain "aerosol" means the emission which is discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat;

"flavouring agent" means any ingredient or additive other than tobacco, that is added to a tobacco product regardless of its source and—

(a)delivered as an accessory to, or as a component of a tobacco product;

(b)enhances the use of a tobacco product; or facilitates the appeal and addiction to a tobacco product.

"plain packaging" means measures to restrict or prohibit the use of logos,
colours, brand images or promotional information on packaging other than
brand names and product names displayed in a standardized colour and font style;

"principal display area" means the surfaces of any tobacco product package that may be displayed or visible under normal conditions of sale and, in the case of—

(a)box type packages, two equal sized largest surface areas of the box that may be displayed or visible under normal conditions of sale or use;

(b)pouch type packages, the entire surface area of the pack that may be displayed or visible under the normal conditions of sale or use;
(c)conical or cylindrical type of packages, the entire curved area of the pack that may be displayed or visible under normal conditions of sale or use; or
any other form or type of package, the entire surface area of the pack that may be displayed or visible under normal conditions of sale or use;
"shisha" includes tobacco products that may be flavoured or non flavourcd that are consumed using a single or multi-stemmed smoking liquid through which the smoke passes before reaching the smoker and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours including apple, grape, guava, lemon and mint; and
"shisha smoking" means a form of consumption of shlsha that ulilizcs a
single or multi-stemmed smoking instrument to smoke shisha where the
smoke is designed to pass through water or other liquid before reaching
the smoker.

Justification: The organisation says that this is intended to close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1053. **Amend Clause 3** (definitions: "smoking"): The Bill revises "smoking" to include inhaling or exhaling smoke or vapour delivered through electronic means. Should be retained, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.

Justification: The definition should close the common loophole under which sellers' market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. WHO states that ENDS emissions contain nicotine and other toxic substances harmful to users
and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1054. **Amend Clause 3** (definitions: "tobacco product", "characterising flavour"): The Bill brings synthetic nicotine formulations and nicotine analogues into the definition of tobacco product and introduces a definition of characterising flavour. Retain and strengthen by defining nicotine analogues functionally, and by extending "characterising flavour" to include cooling agents,

sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.

Justification: Industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling

additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for palatability. A functional definition reduces evasive

product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1055. **Amend Clause 5** on the Tobacco Control Advisory Committee by removing the seat for a Kenya National Chamber of Commerce and Industry or business representative, and adding mandatory public disclosure of interests, minutes, agendas and all meetings with industry, a ban on gifts, partnerships and non-essential contact, and recusals backed by sanctions. Amend the seat for a person with tobacco expertise, now nominated by the Council of Governors, to read: "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health." Require the Cabinet Secretary for Health to nominate the person representing non-governmental organisations.

Justification: Women 4 Cancer gave the same reasons as the Purple Heart Organization above. It called the business seat a structural weakness, noted that Article 5.3 of the FCTC requires public health policy to be protected from the vested interests of the tobacco industry, and argued that the safer model is to remove the seat and to write transparency, limited interactions and enforceable recusals into the law.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1056. **Amend Clause 7** (solatium, or compensatory, contribution) by setting a statutory floor of not less than 2 per cent of the ex-factory value or import value of tobacco and nicotine products, with power to set a higher rate by regulation, and by requiring annual publication of collections and of how the Tobacco Control Fund is used. Amend section 7(4) to state expressly that the Fund covers research, cessation and rehabilitation, public education and awareness, and enforcement support. Insert a new subsection allowing the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumber the present subsection (5) as subsection (6).

Justification: Women 4 Cancer submitted that leaving the contribution open-ended invites lobbying and leaves the Fund open to under-financing. It noted Kenya's 2 per cent benchmark and the Supreme Court decision upholding the wider tobacco control framework. On disbursement, it submitted the Fund is a statutory fund set up under the Tobacco Control Act, run within the health framework and aimed at research, cessation, public education and enforcement. Because the Act already places implementation and regulation in the health sector, the Cabinet Secretary for Health is the most suitable authority to set the criteria, eligible recipients, reporting duties and accountability safeguards, while the Fund stays subject to the wider public finance framework. It also noted that enforcement of tobacco control is a devolved function, yet the Ministry of Health is not passing money from the Fund to county enforcement programmes, and that research and public awareness are delivered better by research and civil society organisations.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

1057. **Make the same amendments, for the same reasons, as the Purple Heart Organization** above on: the title of the Bill; Clause 3 (definitions of "ingredients", "advertisement", "smoking", "tobacco product" and "characterising flavour", and the new definitions of aerosol, flavouring agent, plain packaging, principal display area, shisha and shisha smoking); Clause 10 (tax and price policies); Clause 12 (sections 14A on ENDS, 14B on nicotine pouches, 14C to 14I on approval and testing, and 14J on additives and flavours); Clause 13 (sales buffer of 300 metres and minimum age of 21); Clause 16 (online sales); Clauses 17 and 19 (licensing and registration); Clauses 18 and 23 (warnings and plain packaging); Clause 19 (single-use plastics and disposable vapes); Clauses 20 and 21 (advertising, promotion and sponsorship); Clauses 22 and 24 (smoke-free places and designated smoking areas); Clause 26 (section 53 regulation-making power); and a new section 21C banning shisha.

Justification: Women 4 Cancer submitted its proposals, including the bans on nicotine pouches and shisha and the higher buffer and age, would further strengthen the Bill and help it meet its aims of protecting Kenyan health and strengthening tobacco control. It did not propose the 15 per cent minimum share of the Fund for civil society, or the new section 53(2)(f), which appear only in the Purple Heart memorandum.

Committee Resolution: The Committee's resolutions on the corresponding proposals by the Purple Heart Organization above apply.

74) Blue Cross Kenya submitted as follows:

1058. **Clause 12, proposed section 14B:** Amend the provision to prohibit the manufacture, marketing, distribution and sale of nicotine pouches.

Justification: Blue Cross Kenya stated that nicotine pouches have low prevalence among adult smokers but high prevalence among university students, who have low smoking rates. 4.2 percent of university students use nicotine pouches, while 3.2 percent use smoked and smokeless tobacco. The organisation argued that the industry introduced and marketed pouches to target youth, adolescents and children and to create the next generation of users. These groups face higher vulnerability to nicotine addiction and its effects on the developing brain. Use among adolescents stands at 0.22 percent, and a ban would protect them from introduction and addiction.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1059. **Clause 7:** Amend section 7 of the principal Act to provide for disbursement of the Tobacco Control Fund to county governments, other Ministries, Departments and Agencies with tobacco control roles, research organisations and civil society organisations.

Justification: Enforcement of tobacco control measures is a devolved function, yet the Ministry of Health does not devolve money from the Fund to support county enforcement programmes. Research organisations and civil society deliver the research and public awareness mandates of the Fund more effectively.

Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

1060. **Clause 13:** Increase the distance within which the Bill restricts marketing near places serving minors from 100 metres to 300 metres, and raise the minimum age of access to tobacco products from 18 to 21 years.

Justification: The amendment aligns tobacco control law with proposed alcohol control law, which provides for 300 metres and a minimum age of 21 years, and eases enforcement. The adolescent brain develops until about age 25. Raising the age of access to 21 years adds three years of protection from nicotine addiction.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap.

141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1061. **New clause:** Insert a provision prohibiting the manufacture, marketing, sale and distribution of shisha products.

Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Tobacco Control Act allows a higher and more deterrent fine and protects young people from shisha use.

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

75) The Society of Community Health Caregivers (SOCHE), in a separate memorandum, submitted as follows:

SOCHE is a registered umbrella body for Community Health Officers and Assistants in Kenya, established under the Societies Act, Cap. 108.

1062. **Amend Section 7** on the Tobacco Control Fund to provide for disbursement of this Fund to counties, other government Ministries, Departments and Agencies with tobacco control roles, research organisations and to civil society

Justification: The Society averred that enforcement of tobacco control measures is a devolved function, yet the Ministry of Health is not devolving funds from the Tobacco Control Fund to support county enforcement programs. Further, certain mandates of the Tobacco Control Fund, such as research and the creation of public awareness, are more effectively delivered by research organisations and civil society organisations.

In summary, the Society made three recommendations:

i. Ban Nicotine Pouches: Prohibit the manufacture, marketing, distribution, and sale of nicotine pouches to prevent tobacco companies from targeting youth and children, protecting developing brains from nicotine addiction.

ii. Ban Shisha Products: Move the current shisha ban into the Tobacco Control Act to enforce higher, more deterrent penalties against manufacture and sale, further protecting young people.

iii. Tighten Restrictions for Minors: Expand the marketing ban buffer around restricted areas from 100m to 300m and raise the legal age limit from 18 to 21. This protects adolescent brain development up to age 21 and aligns tobacco control directly with proposed alcohol laws for easier enforcement.

Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

76) The Kiambu Cancer Support Group (KCSG) submitted as follows:

1063. **Amend the Bill to ban the manufacture, marketing, distribution and sale of nicotine pouches.**

Justification: KCSG submitted few adult smokers use nicotine pouches, yet use is high among university students who have low smoking rates. It argued that introducing and marketing nicotine pouches is a deliberate move by the tobacco industry to target youth, adolescents and children and to make the next generation of tobacco users addicted. These groups are especially open to nicotine addiction and to its harmful effects on the developing brain. A ban would also protect children and adolescents, who now have low rates of use, from starting and becoming addicted to these products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1064. **Amend the Bill to ban the manufacture, marketing, sale and distribution of shisha products.**

Justification: KCSG noted that shisha is currently banned under Regulations made under the Public Health Act. It argued that placing the ban in the Tobacco Control Act would allow a higher fine for manufacture, distribution and sale, one high enough to deter offenders, and would further protect young people from shisha use.

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1065. **Amend Section 7** on the Tobacco Control Fund to provide for the Fund to be disbursed to counties, other government ministries, departments and agencies with tobacco control roles, research organisations and civil society.

Justification: KCSG noted that enforcing tobacco control measures is a devolved function, yet the Ministry of Health is not devolving money from the Fund to support county enforcement programmes. It added that some tasks of the Fund, such as research and public awareness, are delivered better by research organisations and civil society organisations.

Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

1066. **Strengthen the proposed measures that restrict minors' access to tobacco products** by increasing the distance within which marketing is not allowed from 100 metres to 300 metres, and by raising the age below which a person may not access tobacco products from 18 to 21 years.

Justification: KCSG submitted this would align tobacco control laws with the proposed alcohol control laws, which also provide for 300 metres and 21 years, and would make enforcement easier. It noted that the adolescent brain keeps developing until the age of 25, so raising the age of access to 21 gives adolescents three more years of protection from nicotine addiction.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1067. **Make the same amendments, for the same reasons, as AIHD above on**: the title of the Bill; Clause 3 (definitions of "ingredients", "advertisement", "nicotine pouch", "smoking", "tobacco product" and "characterising flavour", and the new definitions of aerosol, flavouring agent, plain packaging, principal display area, shisha and shisha smoking); Clause 5 (Tobacco Control Advisory Committee); Clause 7 (statutory floor for the solatium contribution, the uses of the Fund and regulations on its disbursement); Clause 10 (tax and price policies); Clause 12 (sections 14A on ENDS, 14B on nicotine pouches, 14C to 14I on approval and testing, and 14J on additives and flavours); Clause 13 (sales buffer of 300 metres and minimum age of 21); Clause 16 (online sales); Clauses 17 and 19 (licensing and registration); Clauses 18 and 23 (warnings and plain packaging); Clause 19 (single-use plastics and disposable vapes); Clauses 20 and 21 (advertising, promotion and sponsorship); Clauses 22 and 24 (smoke-free places and designated smoking areas); Clause 26 (section 53 regulation-making power); and a new section 21C banning shisha.

Justification: KCSG submitted the amendments proposed in the attached matrix would further strengthen the Bill and help it meet its aims of protecting Kenyan health and strengthening tobacco control in Kenya. It did not propose the 15 per cent minimum share of the Fund for civil society or the new section 53(2)(f), which appear only in the Purple Heart memorandum.

Committee Resolution: The Committee's resolutions on the corresponding proposals by the African Institute for Health and Development (AIHD) above apply.

77) Laikipia County Youth in Business submitted as follows:

1068. **Licencing and compliance-mandatory** national registration, county licensing, KEBS testing and packaging requirements applied uniformly across all traders.

Recommendation; Introduce a graduated tiered compliance framework that scales fees and requirements to business size, with simplified pathways and phased timelines for micro and small youth-owned enterprises.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for

county legislation. The Committee further resolved that that the statutory compliance frameworks are intended to protect public health and must apply uniformly, regardless of the size of the establishment. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

1069. **Restriction of sales channels**-this is the prohibition of online sales and mobile vending.
Recommendation: Retain regulated online and mobile sales under strict age-verification and licensing control, rather than an outright ban, to preserve legitimate distribution models already relied upon by young traders.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

1070. **Consumer choice & informal market risk**-Prohibition of characterizing flavours
Recommendation; Adopt a risk-based evidence-led approach to favour regulations that curbs youth appeal while preserving adult consumer choice, to avoid displacing demand into unregulated and unsafe markets.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

1071. **Public health balance**-Designated areas
Recommendation: Fully support and expedite the establishment and enforcement of properly enclosed, well-regulated designated smoking areas nationwide
Committee Resolution: The Committee noted the support. The Bill confines designated smoking areas to areas meeting strict engineering and ventilation standards.

1072. **Enforcement & procedural penalties:** severe penalties are applicable even for procedural, non-wilful and non-compliance
Recommendation: Introduce a compliance grace period with warnings and corrective notices for first-time procedural breaches and reserve severe penalties for wilful or repeat violations.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the penalties in the Tobacco Control Act and the proposed Bill are maximum penalties, expressed as fines or terms of imprisonment "not exceeding" the amounts stated. The court therefore retains the discretion to impose a lesser sentence that reflects the circumstances of each case, including whether the breach was a first offence, procedural in nature or committed without intent.

1073. **Economic and revenue impact**-Cumulative compliance costs across the value chain
Recommendation: They suggest commissioning of a regulatory impact assessment on youth employment, SME viability and county tax revenue prior to full enactment, in consultation with county governments and youth business association.
Committee Resolution: The Committee noted that the Statutory Instruments Act, Cap. 2A requires regulatory impact assessment and public consultation before regulations of significant impact are made.

78) Ms. Whitney Odhiambo of Blue Cross Kenya Youth submitted as follows:

1074. **Long title:** Amend the long title to include nicotine pouches as specific item which the Bill seeks to regulate.
Justification: To align the long title with the substances and products expressly dealt within the Bill.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

1075. **Clause 3:** Amend the definition of "ingredients" to include constituents, emissions, contaminants and by-products generated during heating. aerosolization. storage and use and require disclosure of device-component emissions.
Justification: To widen the definition.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1076. Retain the definition of "advertisement".
Justification: The existing definition is broader.
Committee Resolution: The Committee adopted the proposal. The Committee resolved that the existing broad definition of "advertisement" in the Act shall be retained.

1077. Insert the definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "nicotine analogues", "shisha" and "shisha smoking".
Justification: To close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1078. Amend the definition of "smoking" to include inhaling or exhaling smoke or vapour delivered through electronic means.
Justification: To cover any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1079. Amend the definition of "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.

Justification: To include a functional definition which reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1080. **Clause 5:**

i. Amend the composition of the Advisory Committee by deleting the representative of KNCCI

Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1081. Amend the nominating authority of the person with expertise on matters relating to tobacco control and the person representing NGOs to be nominated by the Cabinet Secretary for Health.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1082. **Clause 7:**

i. Insert a statutory minimum amount for the solatium compensatory contribution.

Justification: Leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

1083. Amend the uses of the Fund to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support.
Justification: The Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement.
Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

1084. Insert a clear statutory framework for disbursement of the Fund to MDAs, academic and research institutions, county governments, and Kenyan CSOs engaged in tobacco control.
Justification: The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards.
Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

1085. **Clause 10:** Amend to expressly provide that tobacco taxes shall be at least 75% of retail price with annual adjustment for inflation an income growth and expressly earmark a defined share for tobacco control
Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1086. **Clause 12:** Delete the proposed new section 14B on the requirements on the manufacture and sale of nicotine products.
Justification: To provide for a total ban on nicotine pouches as nicotine pouches are emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1087. **Clause 13:** Amend to increase the minimum sales buffer from 100 metres to at least 300 metres around premises primarily serving children.
Justification: Distance is low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

1088. **Amend to increase the age threshold from eighteen years to twenty-one years.**
Justification:
Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1089. **Clause 16:** Remove the ban on online sales of tobacco products. Instead impose duties on online platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Governments now treat online sales and cross-border e-commerce as a core regulatory frontier.
Committee Resolution: The Committee did not adopt the proposal to remove the ban on online sales. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1090. **Clause 17 and 19:** Amend to require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.
Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

1091. **Clauses 18 and 23:** Amend to extend large pictorial warnings and standardized packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.
Justification: WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognizes plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1092. **Clause 19:**

i. Amend to expressly ban disposable vapes as a product class, impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.

Justification: Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1093. Insert a new section 21C prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.
Justification:
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1094. **Clauses 20 and 21:** Delete the designated-smoking-area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with specified outdoor smoke/vape-free perimeters around schools, hospitals, playgrounds and public-building entrances.

Justification: There is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Smoking areas facilitate smoking and normalise the behaviour.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1095. **Clause 22:** Amend to delete the DSA model entirely and move to 100% smoke free indoor and enclosed public places or in the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1096. **Clause 24:** If DSAs are retained, require not only certification by a qualified engineer but also approval by the county public health officer, with inspection and approval fees.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

1097. **Clause 26:** Amend section 53 to authorize track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardized packaging rules, and an express bar on delegating state regulatory functions to the tobacco industry.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

79) Beatrice Bahati Mwendwa submitted as follows:

1098. **Clause 2:** Amend the long title to read "An Act of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.

Committee Resolution: The Committee adopted the proposal. The Bill prohibits nicotine pouches under proposed section 14B and the long title shall be amended to include nicotine pouches.

1099. **Clause 3 (definition of "ingredients"):** Retain the expanded definition but add "constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use", and require disclosure of device-component emissions.
Justification: For novel nicotine products the main risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents matter. Regulating contents and emissions aligns the Bill with modern product regulation and makes later standards on testing, approval and recall legally safer.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1100. **Clause 3 (definition of "advertisement"):** Reject the replacement definition; retain the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics".
Justification: A shorter replacement definition risks narrowing the existing coverage of advertising and promotion. The existing broad definition, supplemented by promotion through brand characteristics, is consistent with Article 13 of the WHO FCTC and prevents indirect marketing through brand imagery.
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1101. **Clause 3 (new definitions):** Insert definitions of "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha" and "shisha smoking".
Justification: Intended to close interpretive gaps and support enforcement of the packaging, flavour and shisha provisions.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1102. **Clause 3 (definition of "smoking"):** Retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not and whether visible or invisible.
Justification: Closes the loophole under which sellers market products as nicotine-free or "herbal" and argue that smoke-free protections do not apply. WHO states that e-cigarette emissions contain nicotine and other toxic substances harmful to users and non-users. A technology-neutral definition future-proofs the Act against new devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1103. **Clause 3 (definitions of "tobacco product" and "characterising flavour"): Retain** and strengthen by defining nicotine analogues functionally and extending "characterising flavour" to cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".
Justification: Industry practice includes chemical reformulation, branding tricks and non-traditional descriptors that preserve youth appeal while formally avoiding a named flavour. A narrow definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours". WHO and the FCTC Secretariat have called for bans on ingredients that increase attractiveness and palatability; a functional definition supports enforcement against look-alike products.
Committee Resolution: The Committee adopted the proposal in part. The inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1104. **Clause 5 (Tobacco Control Advisory Committee):** Delete section 5A(1)(g) entirely and amend section 5A(2) to clarify that the remaining members are appointed by the Cabinet Secretary.
Justification: The business seat is a structural weakness. The tobacco industry has a direct commercial interest in weakening demand-reduction measures, and Article 5.3 of the WHO FCTC requires protection of public health policy from the commercial and other vested interests of the tobacco industry. The conflict-of-interest wording is useful but insufficient if the Committee still institutionalises an industry-adjacent nomination route. The safer model is to remove the seat and legislate transparency, limited interactions and enforceable recusals.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

1105. **Clause 5 (expert member):** Amend to "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health" in place of nomination by the Council of Governors.
Justification: The nominations to the Committee should rest with the Cabinet Secretary for Health, who is responsible for health policy and for protecting the Committee from conflicts of interest.

Committee Resolution: The Committee did not adopt the proposal. Nomination of the expert member by the Council of Governors is retained, as it gives effect to the role of counties in public health and tobacco control under the Fourth Schedule to the Constitution and to the principle of consultation and cooperation between the two levels of government.

1106. **Clause 5 (NGO representative):** Amend to require nomination of the representative of non-governmental organisations involved in tobacco control by the Cabinet Secretary for Health.
Justification: The nomination by the Cabinet Secretary for Health ensures the representative is independent of industry-linked groups.
Committee Resolution: The Committee did not adopt the proposal. The nomination of the representative of non-governmental organisations remains as provided in the Bill. The Committee noted the need for a transparent and competitive selection process.

1107. **Clause 7 (solatium compensatory contribution):** Insert a statutory floor of not less than 2% of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and require annual publication of collections and use of the Fund.
Justification: Leaving the contribution open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in its regulatory history, and the Supreme Court of Kenya ruled in British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & others (Petition No. 5 of 2017) that the 2% solatium compensatory contribution on tobacco products is a valid regulatory levy and not an unconstitutional tax. Therefore, a statutory floor secures predictability for prevention, cessation, enforcement and treatment, and annual public reporting.
Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

1108. **Clause 7 (purposes of the Fund):** Amend section 7(4) to include research and dissemination of information; cessation and rehabilitation; public education, awareness creation and advocacy; treatment and management of tobacco-related chronic illness; and support for community-based programmes run by youth, faith-based and civil society organisations. Insert a new section 7(4A) requiring not less than 15% of annual disbursements to be allocated to Kenyan civil society and non-governmental organisations.
Justification: The Act and the Bill do not explicitly fund public awareness, civil-society-led community programmes or treatment of tobacco-related disease. Counties and civil society have enforcement and education roles but no dedicated funding, and treatment costs are left uncovered, which is at odds with the right to health under Article 43. The amendment also aligns with Article 12 of the WHO FCTC (education, communication, training and public awareness). Without a minimum allocation, grassroots advocacy and community monitoring

remain under-resourced. A 15% allocation to Kenyan civil society and non-governmental organisations for community-based programmes, public education and advocacy enables independent monitoring of industry conduct, consistent with Article 5.3 of the WHO FCTC.
Committee Resolution: The Committee did not adopt the proposal. Section 7(4) already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. In addition, the Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

1109. **Clause 10 (tax and price policies):** Retain and strengthen by requiring that tobacco taxes move to at least 75% of retail price, with annual adjustment for inflation and income growth, and expressly earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.
Justification: Taxation is the most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats taxes above 75% of retail price as the highest standard and stresses the need to maintain affordability pressure over time. Unless taxes are indexed to inflation and income growth, products become cheaper in real terms and youth access rises. Earmarking revenue answers an implementation problem: strong laws fail when enforcement, cessation and surveillance are unfunded.
Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.75

1110. **Clause 12 (proposed section 14A: electronic nicotine delivery systems):** Prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets and a nicotine cap of not more than 10 mg/mL.
Justification: The present text normalises market entry for an addictive product class whose public-health risks remain substantial. WHO states that e-cigarettes are harmful and not safe, expose bystanders to harmful aerosol and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU framework (20 mg/mL, 10 mL, 2 mL) is a minimum floor, not a best-practice ceiling, and the United Kingdom and Belgium have prohibited disposable vapes. In the alternative, only reusable closed systems, tobacco flavour

only, no disposable devices, no internet sales, adult-only licensed outlets and a nicotine cap of not more than 10 mg/mL should be permitted.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1111. **Clause 3 (definition of "nicotine pouch") and Clause 12 (proposed section 14B), with consequential references in Clauses 16 and 23:** Retain the definition but replace section 14B with an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch", with a fine of up to one million shillings or imprisonment for up to two years, or both, and delete the consequential references that assume lawful sale. In the alternative, regulate pouches like tobacco products with flavours banned, plain packaging, no displays or online sales and a cap of not more than 4 mg per pouch.

Justification: A prohibition model is preferable because nicotine pouches are discreet oral products that are easy to conceal and to use in smoke-free spaces and are often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified pouches as emerging products that create serious regulatory challenges, often promoted as "tobacco-free", and has called for urgent action on flavours. Prevalence is low among adult smokers (6.2% of adults) but high among university students (4.2%) who smoke less, which indicates targeting of young people. In the alternative, if pouches are not prohibited, they should be regulated like tobacco products, with flavours banned, plain packaging, no displays or online sales and a lower nicotine cap of not more than 4 mg per pouch in place of the 20 mg proposed.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1112. **Clause 12 (proposed sections 14C–14I: approval, testing, listing and bans):** Retain and strengthen by requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval or refusal, and a clear appeal and recall process.

Justification: This is one of the strongest provisions of the Bill and should be defended. A product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and compliance before market entry and throughout the product life cycle, and independent testing is essential because industry-submitted claims on ingredients and

emissions are not self-verifying. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1113. **Clause 12 (proposed section 14J: additives and characterising flavours):** Retain and strengthen by expressly covering menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation across all tobacco and nicotine products.

Justification: This clause is a core youth-protection measure. WHO and the FCTC Secretariat call for urgent action against flavours and other design features that increase attractiveness and palatability. Partial bans are easily evaded through cooling additives, ambiguous descriptors, accessories and device design, so a comprehensive ban must be based on sensory effect and not merely on names.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1114. **Clause 13 (section 15: youth-appealing designs and sales buffer):** Retain the design prohibition and in section 15(5A), increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children.

Justification: The design ban is sound. The 100-metre distance is too low for practical enforcement in dense urban settings and does not adequately reduce the visibility and availability of tobacco and nicotine products around children. Kenya already applies a 300-metre public-health buffer in alcohol-control law for learning institutions, and using the same benchmark improves coherence in child-protection legislation.

Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

1115. **Clause 13 (minimum age):** Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".

Justification: Raising the age to twenty-one brings tobacco control into line with the proposed alcohol-control law and eases enforcement. The adolescent brain continues to develop until about the age of 25, so raising the age of access to twenty-one gives a further

three years of protection from nicotine addiction. This is an additional amendment, as these subsections are not amended by the Bill.

Committee Resolution: The Committee did not adopt the proposal. The age of eighteen years is retained, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1116. **Clause 16 (proposed section 19A: online sales):** Retain and strengthen by imposing duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: A simple ban is necessary but not sufficient. Online tobacco and vape commerce shifts to social media, messaging channels, cross-border websites and intermediary platforms. Without platform obligations, traceability and takedown mechanisms enforcement is reactive and uneven. Belgium and the Netherlands treat online and cross-border sales as a core regulatory frontier; Kenya should legislate the enforcement chain and not only the prohibited act.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online. The Committee resolved that regulations shall require platform operators and payment and delivery service providers to cooperate with enforcement agencies, including the Communications Authority of Kenya, in removing unlawful listings.

1117. **Clauses 17 and 19 (county licensing and national registration):** Retain the dual licensing model but require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial-ownership disclosure, retailer-density controls and mandatory publication of suspensions and revocations.

Justification: County licensing plus national registration is defensible because it gives local and national authorities visibility over the supply chain. The risk is fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial-ownership disclosure and publication of licence outcomes help identify front companies and repeat offenders, consistent with the licensing and traceability logic of the Protocol to Eliminate Illicit Trade in Tobacco Products.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

1118. **Clauses 18 and 23 (pack warnings, plain packaging and retail warnings):** Defend the 75% warning rule and plain-packaging power; extend large pictorial warnings and standardised packaging to ENDS and nicotine pouches; require a quitline message and a poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter signage at retail.

Justification: This is a major public-health gain and should not be diluted. Guidelines to Article 11 of the WHO FCTC treat large, clear and prominent warnings as essential and recognise plain packaging as a legitimate means of reducing product appeal. Evidence reviews, including Cochrane, support the finding that standardised packaging reduces appeal. Novel products should not keep branding intensity simply because they fall outside traditional cigarette packaging norms.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1119. **Clauses 20 and 21 (digital and indirect advertising and promotion):** Expand into a full-spectrum ban on tobacco advertising, promotion and sponsorship covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, promotional competitions and point-of-sale visibility.

Justification: This should be treated as a modern Article 13 clause, not a narrow social-media amendment. The industry now markets through creators, events, sponsorship, discounts, product seeding and hashtag campaigns. A partial digital ban will be outpaced, and Article 13 guidance favours a comprehensive ban because partial bans merely displace promotion from one channel to another.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1120. **Clauses 22 and 24 (smoke-free places and designated smoking areas):** Delete the designated smoking area exception and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor smoke-free perimeters around schools, hospitals, playgrounds and public-building entrances. In the alternative, if designated smoking areas are retained, remove aircraft from any place where one may be allowed.

Justification: This is where the Bill still falls below best practice. The Article 8 guidelines are categorical: there is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Once e-cigarettes and heated products are included, designated rooms also create an enforcement fiction because aerosol drift and worker exposure remain. If designated areas are retained, none should be permitted on aircraft.

Committee Resolution: The Committee resolved that no designated smoking area shall be permitted on aircraft. The Committee did not adopt the proposal to delete designated

smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards.

1121. **Clause 24 (section 35(2)(b)(iii): certification of designated smoking areas):** If designated smoking areas are retained, require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: Certification by an engineer addresses design only. County public health officers are responsible for inspection and enforcement of public-health standards, and approval and inspection fees ensure continuing compliance.
Committee Resolution: The Committee adopted the proposal. Certification of a designated smoking area by a qualified engineer shall be accompanied by approval of the county public health officer and fees for inspection and approval may be prescribed.

1122. **Clause 19 (proposed section 21B: single-use plastics and disposable products):** Retain and strengthen by expressly banning disposable vapes as a product class, imposing take-back and producer-responsibility obligations for batteries and device waste, and authorising seizure and destruction of non-compliant stock.
Justification: This is a strong environmental-health clause. Disposable vapes are engineered for cheap uptake, concealability and repeat purchase and create an avoidable stream of plastic, metal, lithium-battery and nicotine waste. The United Kingdom has banned single-use vapes and Belgium has banned the sale of disposable e-cigarettes. Take-back and producer-responsibility obligations and seizure powers make the clause enforceable rather than symbolic.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1123. **New section 21C (shisha):** Insert a new section prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of up to KES 5 million or imprisonment for up to three years, or both.
Justification: A ban on shisha in the Act, rather than only in regulations under the Public Health Act, allows a higher and sufficiently deterrent penalty and further protects young people from shisha use. It complements the proposed definitions of shisha.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be expressly provided for in the Act.

1124. **Clause 26 (section 53(2)(f)):** Insert a new paragraph empowering the Cabinet Secretary to prescribe the criteria, application procedure, vetting, reporting, accountability, audit and

geographic-equity requirements for funding to civil society organisations engaged in tobacco control.

Justification: The Fund is a sector-specific statutory fund and the Act vests regulatory authority in the Cabinet Secretary for Health, to prescribe eligibility, reporting and accountability. Without express regulatory authority the Fund risks being inaccessible to smaller or county-based organisations. A clear framework ensures transparency, prevents capture and satisfies the Public Finance Management Act requirements for fair and accountable disbursement of public funds. Enforcement of tobacco control is a devolved function, yet the Ministry of Health is not devolving Fund resources to counties.

Committee Resolution: The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control. Expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies contrary to the Public Finance Management Act, Cap. 412A.

1125. **Clause 26 (section 53: regulation-making power):** Expand section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardised packaging rules and an express bar on delegating state regulatory functions to the tobacco industry.

Justification: Section 53 should be the Bill's enforcement engine. The more clearly Parliament authorises disclosure, traceability, recall, seizure, packaging and supply-chain controls, the harder it will be to challenge later regulations as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking and tracing as state functions, and an express non-delegation clause avoids the conflict that Article 5.3 seeks to prevent.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act. The Committee further resolved that no regulatory or enforcement function of the State shall be delegated to the tobacco industry, in line with Article 5.3 of the WHO FCTC and the Protocol to Eliminate Illicit Trade in Tobacco Products.

80) Mr. Fredrick Mwangi of Kenyatta University submitted as follows:

1126. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: The amended title reflects the products the Bill regulates.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

1127. **Clause 3:** Retain the definition of "nicotine pouch" and refine it for enforcement clarity. Delete all consequential references in Clauses 16 and 23, and in any other clause, that presuppose the lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions.

Justification: Mr. Mwangi proposed a prohibition model for nicotine pouches under the proposed section 14B. A clear definition of a prohibited product closes loopholes, supports seizure and prosecution, and keeps the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1128. **Clause 3:** Retain the expanded definition of "ingredients" and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.

Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1129. **Clause 3:** Reject the shorter replacement definition of "advertisement". Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".

Justification: Mr. Mwangi provided no separate justification for this proposal.

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1130. **Clause 3:** Insert new definitions as follows:

1) "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,
2) "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,
3) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,

4) "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of pouch, conical, cylindrical or any other package type,
5) "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and
6) "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: Mr. Mwangi submitted that the new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1131. **Clause 3:** Retain the revised definition of "smoking" and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. WHO reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1132. **Clause 3:** Retain the definitions of "tobacco product" and "characterising flavour". Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1133. **Clause 5:** Amend the proposed Tobacco Control Advisory Committee by:

1) removing the seat for the Kenya National Chamber of Commerce and Industry nominee,
2) requiring public disclosure of interests, minutes, agendas and all meetings with industry, prohibiting gifts, partnerships and non-essential interactions, and requiring recusals backed by sanctions,
3) replacing the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and
4) requiring the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. Mr. Mwangi noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1134. **Clause 7:** Amend section 7 of the principal Act by:

1) setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,
2) amending section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support, and
3) inserting a new subsection empowering the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumbering subsection (5) as subsection (6).

Justification: An open-ended contribution invites lobbying and leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. Mr. Mwangi stated that enforcement of tobacco control is a devolved function, yet the Ministry of Health does not channel Fund money to county enforcement programmes. Research institutions and civil society deliver research and public awareness more effectively. Public reporting ties the Fund visibly to health protection.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the

Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

1135. **Clause 10:** Retain the provisions on tax and price policies and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. Mr. Mwangi cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1136. **Clause 12, proposed section 14A:** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. Mr. Mwangi cited data showing that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee

noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1137. **Clause 12, proposed section 14B:** Delete the proposed section and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.
Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. Mr. Mwangi cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern points to deliberate targeting of young people. Use among adolescents stands at 0.22 percent, and a ban would keep it low.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1138. **Clause 12, proposed sections 14C to 14I:** Retain the pre-market approval provisions and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.
Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1139. **Clause 12, proposed section 14J:** Retain the prohibition on additives and characterising flavours and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.

Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. Mr. Mwangi cited the Netherlands' move to tobacco-flavour-only e-liquids.
Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1140. **Clause 13:** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".
Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1141. **Clause 16:** Retain the ban on online sales in the proposed section 19A and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Mr. Mwangi cited enforcement against online vape sales in Belgium and the Netherlands' ban on cross-border online sales.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1142. **Clauses 17 and 19:** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.
Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and

importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

1143. **Clauses 18 and 23:** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.
Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews support the finding that standardised packaging reduces appeal.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1144. **Clause 19, proposed section 21B:** Retain the prohibition on single-use plastics and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1145. **Clauses 20 and 21:** Expand the advertising provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship. The ban should cover digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.
Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Mr. Mwangi stated that Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1146. **Clauses 22 and 24:** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from places where they may exist, and amend section 35(2)(b)(iii) to require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.

Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1147. **Clause 26:** Expand the regulation-making power in section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.

Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

1148. **New clause:** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.

Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

81) Mr. Henry Muema Ndata submitted as follows:

1149. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: The amended title reflects the products the Bill regulates.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

1150. **Clause 3:** Retain the definition of "nicotine pouch" and refine it for enforcement clarity. Delete all consequential references in Clauses 16 and 23, and in any other clause, that presuppose the lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions.
Justification: Mr. Ndata proposed a prohibition model for nicotine pouches under the proposed section 14B. A clear definition of a prohibited product closes loopholes, supports seizure and prosecution, and keeps the law from normalising a new addictive consumer product.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1151. **Clause 3:** Retain the expanded definition of "ingredients" and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.
Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1152. **Clause 3:** Reject the shorter replacement definition of "advertisement". Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".
Justification: Mr. Ndata provided no separate justification for this proposal.
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1153. **Clause 3:** Insert new definitions as follows:

1) "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,
2) "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,
3) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,
4) "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of pouch, conical, cylindrical or any other package type,
5) "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and
6) "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: Mr. Ndata submitted that the new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1154. **Clause 3:** Retain the revised definition of "smoking" and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.
Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. WHO reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.
Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1155. **Clause 3:** Retain the definitions of "tobacco product" and "characterising flavour". Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents,

sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1156. **Clause 5:** Amend the proposed Tobacco Control Advisory Committee by:

1) removing the seat for the Kenya National Chamber of Commerce and Industry nominee,
2) requiring public disclosure of interests, minutes, agendas and all meetings with industry, prohibiting gifts, partnerships and non-essential interactions, and requiring recusals backed by sanctions,
3) replacing the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and
4) requiring the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. Mr. Ndata noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1157. **Clause 7:** Amend section 7 of the principal Act by:

1) setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,
2) amending section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support, and
3) inserting a new subsection empowering the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and

research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumbering subsection (5) as subsection (6).

Justification: An open-ended contribution invites lobbying and leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. Mr. Ndata stated that enforcement of tobacco control is a devolved function, yet the Ministry of Health does not channel Fund money to county enforcement programmes. Research institutions and civil society deliver research and public awareness more effectively. Public reporting ties the Fund visibly to health protection.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

1158. **Clause 10:** Retain the provisions on tax and price policies and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. Mr. Ndata cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1159. **Clause 12, proposed section 14A:** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-

nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. Mr. Ndata cited data showing that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1160. **Clause 12, proposed section 14B:** Delete the proposed section and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.

Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. Mr. Ndata cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern points to deliberate targeting of young people. Use among adolescents stands at 0.22 percent, and a ban would keep it low.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1161. **Clause 12, proposed sections 14C to 14I:** Retain the pre-market approval provisions and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and

compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1162. **Clause 12, proposed section 14J:** Retain the prohibition on additives and characterising flavours and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.

Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. Mr. Ndata cited the Netherlands' move to tobacco-flavour-only e-liquids.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1163. **Clause 13:** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".

Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1164. **Clause 16:** Retain the ban on online sales in the proposed section 19A and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Mr. Ndata cited enforcement against online vape sales in Belgium and the Netherlands' ban on cross-border online sales.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1165. **Clauses 17 and 19:** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.
Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

1166. **Clauses 18 and 23:** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.
Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews support the finding that standardised packaging reduces appeal.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1167. **Clause 19, proposed section 21B:** Retain the prohibition on single-use plastics and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1168. **Clauses 20 and 21:** Expand the advertising provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship. The ban should cover digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.

Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Mr. Ndata stated that Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1169. **Clauses 22 and 24:** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from places where they may exist, and amend section 35(2)(b)(iii) to require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.

Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1170. **Clause 26:** Expand the regulation-making power in section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.

Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

1171. **New clause:** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.
Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

82) Ms. Mercy Nduta Ndung'u submitted as follows:

1172. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: The amended title reflects the products the Bill regulates.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

1173. **Clause 3:** Retain the definition of "nicotine pouch" and refine it for enforcement clarity. Delete all consequential references in Clauses 16 and 23, and in any other clause, that presuppose the lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions.
Justification: Ms. Ndung'u proposed a prohibition model for nicotine pouches under the proposed section 14B. A clear definition of a prohibited product closes loopholes, supports seizure and prosecution, and keeps the law from normalising a new addictive consumer product.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1174. **Clause 3:** Retain the expanded definition of "ingredients" and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.
Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-

products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1175. **Clause 3:** Reject the shorter replacement definition of "advertisement". Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".

Justification: Ms. Ndung'u provided no separate justification for this proposal.

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1176. **Clause 3:** Insert new definitions as follows:

1) "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,
2) "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,
3) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,
4) "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of pouch, conical, cylindrical or any other package type,
5) "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and
6) "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: Ms. Ndung'u submitted that the new definitions close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1177. **Clause 3:** Retain the revised definition of "smoking" and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. WHO reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1178. **Clause 3:** Retain the definitions of "tobacco product" and "characterising flavour". Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1179. **Clause 5:** Amend the proposed Tobacco Control Advisory Committee by:

1) removing the seat for the Kenya National Chamber of Commerce and Industry nominee,
2) requiring public disclosure of interests, minutes, agendas and all meetings with industry, prohibiting gifts, partnerships and non-essential interactions, and requiring recusals backed by sanctions,
3) replacing the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and
4) requiring the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. Ms. Ndung'u noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1180. **Clause 7:** Amend section 7 of the principal Act by:

1) setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,
2) amending section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support, and
3) inserting a new subsection empowering the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumbering subsection (5) as subsection (6).

Justification: An open-ended contribution invites lobbying and leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. Ms. Ndung'u stated that enforcement of tobacco control is a devolved function, yet the Ministry of Health does not channel Fund money to county enforcement programmes. Research institutions and civil society deliver research and public awareness more effectively. Public reporting ties the Fund visibly to health protection.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

1181. **Clause 10:** Retain the provisions on tax and price policies and require tobacco taxes to reach at least 75 percent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 percent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. Ms. Ndung'u cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1182. **Clause 12, proposed section 14A:** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.
Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and Belgium have banned disposable vapes. Ms. Ndung'u cited data showing that 5.8 percent of university students use e-cigarettes.
Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1183. **Clause 12, proposed section 14B:** Delete the proposed section and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.
Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. Ms. Ndung'u cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern points to deliberate targeting of young people. Use among adolescents stands at 0.22 percent, and a ban would keep it low.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete

ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1184. **Clause 12, proposed sections 14C to 14I:** Retain the pre-market approval provisions and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.
Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1185. **Clause 12, proposed section 14J:** Retain the prohibition on additives and characterising flavours and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.
Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. Ms. Ndung'u cited the Netherlands' move to tobacco-flavour-only e-liquids.
Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1186. **Clause 13:** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".
Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap.

141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1187. **Clause 16:** Retain the ban on online sales in the proposed section 19A and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Ms. Ndung'u cited enforcement against online vape sales in Belgium and the Netherlands' ban on cross-border online sales.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1188. **Clauses 17 and 19:** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.
Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

1189. **Clauses 18 and 23:** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.
Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews support the finding that standardised packaging reduces appeal.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1190. **Clause 19, proposed section 21B:** Retain the prohibition on single-use plastics and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.
Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1191. **Clauses 20 and 21:** Expand the advertising provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship. The ban should cover digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.
Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Ms. Ndung'u stated that Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1192. **Clauses 22 and 24:** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from places where they may exist, and amend section 35(2)(b)(iii) to require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1193. **Clause 26:** Expand the regulation-making power in section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and

destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.

Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

1194. **New clause:** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.

Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

83) Mr. John Michael Obure Obure of Railway Ward, Kisumu, submitted as follows:

1195. **Clause 13, proposed section 15(5A):** Amend the provision to remove the 100-metre restriction. Retain the prohibition on sale to minors and impose heavy fines and licence cancellation on any trader who sells a tobacco product to a person under the age of 21 years.

Justification: Mr. Obure stated that almost every kiosk in Kisumu town lies within 100 metres of a school, church or playground. The Bill does not state who will measure the distance. The rule will put small traders, including mama mbogas, out of business without stopping sales to minors.

Committee Resolution: The Committee did not adopt the proposal to delete section 15(5A). Distance restrictions complement, and do not replace, controls on sale to minors, and they reduce the visibility of products near children.

1196. **Clause 12, proposed section 14J:** Replace the prohibition on flavours with strict regulation of flavoured products.

Justification: Mr. Obure stated that reports indicate half of the cigarettes sold in Kenya are already illegal. A total flavour ban will push young people to the black market, where no controls exist. He urged the Committee to regulate these products in place of banning them.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main

reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

1197. **Clause 16, proposed section 19A:** Replace the total prohibition on online sales with strict regulation.

Justification: Mr. Obure submitted that a total ban on online sales, like the flavour ban, will drive young buyers to unregulated sellers and expand illicit trade.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that age cannot be reliably verified in online and remote transactions, and children can readily access products ordered online. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

1198. **Clause 17, proposed section 20A:** Harmonise the proposed licensing requirement with existing county licensing.

Justification: Small retailers already pay for a county licence, excise duty to the Kenya Revenue Authority (KRA) and Kenya Bureau of Standards (KEBS) compliance. An additional mandatory licence for storage and distribution will burden small and medium enterprises and cost jobs.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation.

84) Mr. David Ogoro of the Kisumu County Deaf Association submitted as follows:

1199. **Clause 18:** Insert provisions requiring that:

1) all health warnings, ingredient information and cessation information appear in accessible formats, including Braille, large print, easy-to-read formats and Kenyan Sign Language, and
2) the Cabinet Secretary prescribes standards for accessible labelling in consultation with the National Council for Persons with Disabilities.

Justification: The Bill increases health warnings to 75 percent of packaging and bans flavoured products, but it makes no provision for accessible formats for persons with disabilities. Mr. Ogoro relied on Articles 43(1)(a) and 54(1)(e) of the Constitution and the principle of leaving no one behind.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that additional requirements on health warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

85) Ms. Murigi Grace Njeri of Kenyatta University and a tobacco control advocate submitted as follows:

1200. **Clause 3 (definition of "nicotine pouch"):** Retain and refine the definition of "nicotine pouch" for enforcement clarity.

Justification: Ms. Murigi proposed a prohibition of nicotine pouches under Clause 12. A clear definition closes loopholes and supports seizure, enforcement and prosecution.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1201. **Clause 3 (definition of "ingredients"):** Retain the expanded definition and add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use". Require disclosure of emissions from device components.

Justification: For novel nicotine products, the main risks arise during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the liquid or pouch contents count, even where the inhaled aerosol carries more toxicants. The wider definition also makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1202. **Clause 3 (definition of "advertisement"):** Reject the shorter replacement definition. Retain the existing broad definition and add a limb covering "promotion of a tobacco product by means of its brand characteristics".

Justification:

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1203. **Clause 3 (definition of "smoking"):** Retain the revised definition and state expressly that it covers any inhaled aerosol or vapour, whether or not it contains nicotine, and whether visible or invisible.

Justification: Sellers market products as nicotine-free or "herbal" and then argue that smoke-free rules do not apply. The World Health Organization (WHO) reports that some products sold as nicotine-free contain nicotine. A technology-neutral definition prevents relabelling, covers future devices and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1204. **Clause 3 (definitions of "tobacco product" and "characterising flavour"):** Retain both definitions. Define nicotine analogues by their function. Extend "characterising flavour" to cover cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill" and "smooth".

Justification: Industry evades named-flavour bans through chemical reformulation, cooling additives and "concept flavours" that deliver the same sensory effect. WHO and the Secretariat of the WHO Framework Convention on Tobacco Control (FCTC) have called for bans on ingredients that increase attractiveness and palatability.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1205. **Clause 3 (new definitions):** Insert the following new definitions:

i. "aerosol" means the emission discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat,

ii. "flavouring agent" means any ingredient or additive other than tobacco, added to a tobacco product regardless of its source, that is delivered as an accessory to or a component of a tobacco product, enhances the use of a tobacco product, or facilitates the appeal of and addiction to a tobacco product,

iii. "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardised colour and font style,

iv. "principal display area" means the surfaces of a tobacco product package visible under normal conditions of sale or use, being the two largest surfaces of a box-type package and the entire visible surface of a pouch, conical, cylindrical or any other type of package,

v. "shisha" includes flavoured or unflavoured tobacco products consumed through a single or multi-stemmed smoking instrument in which smoke passes through water or other liquid before reaching the smoker, and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours such as apple, grape, guava, lemon and mint, and

vi. "shisha smoking" means consumption of shisha through a single or multi-stemmed smoking instrument designed so that the smoke passes through water or other liquid before reaching the smoker.

Justification: The new definitions close interpretive gaps and support enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1206. **Clause 5 (Tobacco Control Advisory Committee):** Amend the proposed section 5A to:
   i. remove the seat for the Kenya National Chamber of Commerce and Industry nominee,
   ii. require public disclosure of interests, minutes, agendas and all meetings with industry, prohibit gifts, partnerships and non-essential interactions, and require recusals backed by sanctions,
   iii. replace the Council of Governors nominee with "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health", and
   iv. require the Cabinet Secretary for Health to nominate the representative of non-governmental organisations involved in tobacco control.

Justification: Article 5.3 of the FCTC requires Kenya to protect public health policy from the commercial interests of the tobacco industry. A business seat creates an industry-adjacent route into the Committee that conflict-of-interest rules cannot cure. Ms. Murigi noted that the Supreme Court has upheld limits on interaction between public authorities and the tobacco industry.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1207. **Clause 7 (Tobacco Control Fund):** Amend section 7 of the principal Act by:
   i. setting a statutory floor for the solatium contribution of not less than 2 percent of the ex-factory or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation, and requiring annual publication of collections and use of the Fund,
   ii. amending section 7(4) to include research, cessation and rehabilitation, public education and awareness, and enforcement support, and
   iii. inserting a new subsection empowering the Cabinet Secretary to make regulations for disbursement of the Fund to ministries, departments and agencies, academic and research institutions, county governments and Kenyan civil society organisations engaged in tobacco control, and renumbering subsection (5) as subsection (6).

Justification: An open-ended contribution invites lobbying and leaves the Fund under-financed. Kenya's regulatory history already uses a 2 percent benchmark, and the Supreme Court rejected the claim that the solatium contribution was unconstitutional. Ms. Murigi stated that enforcement of tobacco control is a devolved function, yet the Ministry of Health does not channel Fund money to county enforcement programmes. Research institutions and civil society deliver research and public awareness more effectively. The Cabinet Secretary for

Health, who holds regulatory authority under the Act, should prescribe disbursement criteria, eligible recipients and reporting duties within the public finance framework.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

1208. **Clause 10 (tax and price policies):** Retain the clause and require tobacco taxes to reach at least 75 per cent of the retail price, with annual adjustment for inflation and income growth. Earmark a defined share of revenue for tobacco control, cessation and treatment of non-communicable diseases.

Justification: Taxation is the most cost-effective demand-reduction measure. WHO sets taxes above 75 per cent of retail price as best practice. Without indexation to inflation and income, products become cheaper in real terms and youth access rises. Ms. Murigi cited evidence that Kenya spends 3 dollars on health and economic costs for every 1 dollar it collects in tobacco revenue.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1209. **Clause 12 (proposed section 14A, electronic nicotine delivery systems):** Delete the permissive model and prohibit the manufacture, import, sale and distribution of non-therapeutic electronic nicotine and non-nicotine delivery systems as consumer products. In the alternative, permit only reusable closed systems in tobacco flavour, with no disposable devices, no internet sales, sale only through adult licensed outlets, and a nicotine cap of not more than 10 mg/mL.

Justification: WHO states that e-cigarettes are harmful, expose bystanders to aerosol and are linked to uptake of conventional cigarettes among non-smoking youth. The European Union limits of 20 mg/mL, 10 mL and 2 mL set a regulatory floor. The United Kingdom and

Belgium have banned disposable vapes. National data shows that 5.8 percent of university students use e-cigarettes.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1210. **Clause 12 (proposed section 14B, nicotine pouches):** Delete section 14B and substitute an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." A person who contravenes the section commits an offence and is liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or both. Delete consequential references in Clauses 16 and 23 that presuppose lawful sale or display of nicotine pouches, except where needed for seizure, enforcement or offence provisions. In the alternative, regulate nicotine pouches exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the nicotine cap from 20 mg to not more than 4 mg per pouch.

Justification: Nicotine pouches are discreet, easy to conceal and easy to use in smoke-free spaces. Industry markets them in youth-appealing flavours and as "tobacco-free", which misleads consumers about risk. WHO has called for flavour bans that expressly cover pouches. Ms. Murigi cited national data showing that 6.2 percent of adults and 4.2 percent of university students use nicotine pouches, while only 3.2 percent of university students use conventional tobacco. This pattern shows deliberate targeting of young people, whose developing brains are especially vulnerable to nicotine. Use among adolescents stands at 0.22 percent, and a ban would keep it low.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1211. **Clause 12 (proposed sections 14C to 14I, product approval):** Retain the pre-market approval regime and require a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for each approval or refusal, and a clear appeal and recall process.

Justification: An approval regime without public reasons and independent verification can become opaque or captured. The manufacturer should carry the burden of proving safety and compliance throughout the product life cycle. A public register supports consumer protection, customs enforcement and county licensing.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing

shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1212. **Clause 12 (proposed section 14J, additives and characterising flavours):** Retain the section and extend it expressly to menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation, across all tobacco and nicotine products.
Justification: Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. The ban should rest on sensory effect and not on flavour names. The Netherlands has moved to tobacco-flavour-only e-liquids.
Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1213. **Clause 13 (section 15, youth-appealing designs and sales buffer):** Retain the prohibition on youth-appealing designs and increase the sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b) and (5A) by replacing "eighteen" with "twenty-one".
Justification: A 100-metre buffer is too small for enforcement in dense urban areas. Alcohol control law uses 300 metres and a minimum age of 21 years, and a common standard eases enforcement. The adolescent brain develops until about age 25, and raising the age of access to 21 adds three years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1214. **Clause 16 (proposed section 19A, online sales):** Retain the ban on online sales and impose duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: Online trade shifts quickly to social media, messaging channels and cross-border websites. Without platform duties, enforcement stays reactive. Belgium enforces actively against online vape sales, and the Netherlands bans cross-border online sales.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1215. **Clauses 17 and 19 (county licensing and national registration):** Retain county licensing and national registration and require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations.

Justification: Dual licensing gives national and county authorities visibility over the supply chain. Without data-sharing and unified administration, it risks duplication and forum-shopping. Beneficial ownership disclosure exposes front structures and repeat offenders, in line with the Protocol to Eliminate Illicit Trade in Tobacco Products.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. The Committee resolved that matters of a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls and publication of suspensions and revocations relate to implementation and may be prescribed by the Cabinet Secretary in regulations.

1216. **Clauses 18 and 23 (health warnings, plain packaging and retail warnings):** Retain the 75 percent health warning rule and the plain packaging power. Extend large pictorial warnings and standardised packaging to electronic nicotine delivery systems and nicotine pouches. Require a quitline or cessation message and a poison warning for liquid nicotine. Prohibit branded displays and menu-board style counter signage at retail.

Justification: Article 11 guidelines of the FCTC treat large, clear warnings as essential and recognise plain packaging as a legitimate way to reduce product appeal. Cochrane evidence reviews find that standardised packaging reduces appeal.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1217. **Clause 19 (proposed section 21B, single-use plastics):** Retain the section and ban disposable vapes as a product class. Impose take-back and producer-responsibility obligations for batteries and device waste, and authorise seizure and destruction of non-compliant stock.

Justification: Disposable vapes are built for cheap uptake, concealment and repeat purchase. They generate plastic, metal, lithium-battery and nicotine waste. The United Kingdom and Belgium have banned them.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1218. **New clause (new section 21C, shisha):** Insert a new section 21C prohibiting the manufacture, sale, distribution or importation of shisha products, with a penalty of a fine of up to five million shillings, imprisonment for up to three years, or both.
Justification: Regulations under the Public Health Act currently ban shisha. Placing the ban in the Act allows a deterrent penalty and protects young people. The provision complements the proposed definitions of "shisha" and "shisha smoking".
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1219. **Clauses 20 and 21 (advertising, promotion and sponsorship):** Expand the provisions into a comprehensive ban on tobacco advertising, promotion and sponsorship covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, corporate social responsibility, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.
Justification: Article 13 guidelines of the FCTC favour a comprehensive ban because partial bans shift promotion from one channel to another. Kenyans cite social media marketing and attractive packaging as reasons for using new nicotine products.
Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1220. **Clause 22 (smoke-free places and designated smoking areas):** Delete the designated smoking area exception and require 100 percent smoke-free and vape-free indoor and enclosed public places, workplaces, public transport and hospitality venues, with outdoor perimeters around schools, hospitals, playgrounds and entrances to public buildings. In the alternative, if the Bill retains designated smoking areas, exclude aircraft from the places where they may exist.
Justification: Article 8 guidelines of the FCTC state that no level of exposure to tobacco smoke is safe and that ventilation, filtration and designated rooms do not protect people. Aerosol drift and worker exposure persist once electronic products fall within the Act. The Netherlands has rejected smoking rooms.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1221. **Clause 24 (section 35(2)(b)(iii), certification of designated smoking areas):** If the Bill retains designated smoking areas, require approval by the county public health officer, with inspection and approval fees, in addition to certification by a qualified engineer.

Justification: Ms. Murigi gave no separate justification. The proposal follows from the call to delete designated smoking areas under Clause 22.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

1222. **Clause 26 (section 53, regulations):** Expand the regulation-making power to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations and standardised packaging rules. Insert an express bar on delegating state regulatory functions to the tobacco industry.

Justification: Clear statutory authority protects future regulations from challenge as ultra vires. The Illicit Trade Protocol treats licensing, record-keeping, due diligence and tracking as state functions. Industry-run traceability systems create the conflict that Article 5.3 of the FCTC seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

1223. **Long title:** Amend the long title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."

Justification: The amended title reflects the products the Bill regulates.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

86) Wanderi Nyawira, a tobacco control advocate and a pharmacy student at Kenyatta University, submitted as follows:

1224. Amend Section 7 on the Tobacco Control Fund to provide for disbursement of this Fund to counties, other government Ministries, Departments and Agencies with tobacco control roles, research organisations and to civil society

Justification: She averred that enforcement of tobacco control measures is a devolved function, yet the Ministry of Health is not devolving funds from the Tobacco Control Fund to support county enforcement programs. Further, certain mandates of the Tobacco Control Fund, such as research and the creation of public awareness, are more effectively delivered by research organisations and civil society organisations.

In summary, Wanderi made three recommendations:

- **Ban Nicotine Pouches:** Prohibit the manufacture, marketing, distribution, and sale of nicotine pouches to prevent tobacco companies from targeting youth and children, protecting developing brains from nicotine addiction.
- **Ban Shisha Products:** Move the current shisha ban into the Tobacco Control Act to enforce higher, more deterrent penalties against manufacture and sale, further protecting young people.

- **Tighten Restrictions for Minors:** Expand the marketing ban buffer around restricted areas from **100m to 300m** and raise the legal age limit from **18 to 21**. This protects adolescent brain development up to age 21 and aligns tobacco control directly with proposed alcohol laws for easier enforcement.

Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

87) Caleb Ngala, Founder of Mathare Community Anti-Drugs and Alcohol Prevention Initiative Community Anti-Drugs and Alcohol Prevention Champion submitted as follows:

1225. **Clause 13 (section 15: protection of children and young people):** Strengthen enforcement of the prohibition on sale to persons under eighteen years; require effective age verification at physical and online points of sale; introduce stronger, proportionate sanctions for retailers who repeatedly sell to minors; prohibit marketing, packaging, branding and product designs intended to attract children; and require regular compliance inspections around schools, TVET institutions and youth centres.

Justification: Articles 43 and 53 of the Constitution, the Children Act, Cap. 141 and section 3(c) of the Tobacco Control Act require the protection of children and the best interests of the child to be paramount.

Committee Resolution: The Committee adopted the proposal in part. The prohibition of sale to persons under eighteen years and of youth-appealing designs is retained in Clause 13. Online sales are prohibited in section 19A, as age cannot be verified online. The Committee resolved that regulations shall provide for age verification at physical points of sale and for compliance inspections, and that penalties for repeat offending by retailers be provided.

1226. **Clause 12 (regulation of vapes, nicotine pouches and emerging products):** Ensure that e-cigarettes, electronic nicotine delivery systems, refill containers, nicotine pouches, synthetic nicotine and future products are clearly regulated, covering manufacture, importation, licensing, testing, distribution, storage, advertising, online marketing, retail sale and disposal, with testing and verification of nicotine concentration and ingredients before authorisation.

Justification: The Bill's measures on electronic nicotine delivery systems and related products respond to the emerging products identified in the memorandum, and the Tobacco Control Act, 2007 was drafted before these products were on the market.

Committee Resolution: The Committee noted the support. Clause 12 provides for pre-market approval, testing, flavour restrictions, packaging and the other measures proposed, and the definitions in Clause 3 extend to synthetic nicotine, nicotine pouches and related products.

1227. **Clauses 7 and 26 (community prevention and public awareness)**: Establish and support community-based tobacco prevention programmes; recognise trained community anti-drugs and alcohol prevention champions, community health promoters, youth leaders, educators and faith-based organisations as partners in prevention, education and referral; and integrate tobacco prevention into schools, TVET institutions and youth, sports and health programmes.

Justification: Section 3(d) of the Tobacco Control Act provides for public information, education and communication on the harmful consequences of tobacco, and prevention should not rely on restriction of products alone.

Committee Resolution: The Committee adopted the proposal with amendments. Section 7(4) already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. The Committee did not consider it appropriate to confer statutory functions on community volunteers, youth leaders, educators and faith-based organisations whose role should complement that of authorised officers and health professionals under the Act.

1228. **Clauses 7 and 10 (cessation services and informal settlements):** Integrate tobacco-use screening and cessation services into primary health care and community health services, provide counselling, referral and accessible quit-support programmes, and ensure these reach low-income communities and informal settlements.

Justification: Article 43 of the Constitution and the Health Act, Cap. 241 guarantee the right to health, and cessation is a necessary complement to restrictions on supply.

Committee Resolution: The Committee noted the support. Cessation and rehabilitation are among the purposes of the Fund under section 7(4) of the Act, and Clause 10 of the Bill provides for allocation of part of tobacco revenue to non-communicable disease prevention and control. The delivery of cessation services in primary health care is a matter for the Ministry of Health and counties to be addressed in the regulations and in county implementation plans.

1229. **Clauses 22 and 24 (protection from second-hand smoke)**: Strengthen enforcement of smoke-free public environments, with particular attention to schools, hospitals, public transport, markets, restaurants, public offices, children's facilities and sports grounds, combined with public education on how to report violations.

Justification: Section 3(e) of the Tobacco Control Act seeks to protect non-smokers and promote the right to a smoke-free environment.

Committee Resolution: The Committee noted the support. Clauses 22 and 24 expand smoke-free places and extend them to electronic nicotine delivery systems, and the Committee resolved to retain them.

1230. **Clauses 20 and 21 (advertising, promotion and digital marketing):** Strengthen restrictions on advertising, promotion and sponsorship, addressing social media, influencer

marketing, online sales, promotional discounts, free samples, sponsorship of youth events, indirect marketing and product placement.

Justification: Digital platforms must not be used to circumvent the restrictions applicable to conventional advertising.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1231. **Clauses 7 and 10 (taxation and prevention funding)**: Use taxation as one component of demand reduction, support prevention, cessation, public education, research, treatment and enforcement through transparent funding mechanisms, and ensure that any funding remains subject to constitutional public finance principles, oversight and accountability.

Justification: Articles 201 and 202 of the Constitution on public finance and the sharing of revenue with counties require accountability.

Committee Resolution: The Committee noted the support. The prevailing statutory and legal framework provides for accountability, audit and reporting in accordance with the Public Finance Management Act, Cap. 412A and the Public Audit Act, Cap. 412B and Clause 10 is retained.

1232. **Clause 26 (community reporting, implementation and accountability):** Establish accessible mechanisms for citizens to report sales to minors, illegal advertising, illegal products, smoking in prohibited areas and illicit trade; develop a national, county and community implementation framework; publish periodic implementation and enforcement reports; and ensure continuing public participation, including of persons with disabilities, youth, women and vulnerable communities, in the development of regulations.

Justification: Public participation is required by Article 118 of the Constitution, and community reporting and published indicators strengthen accountability and enforcement.

Committee Resolution: The Committee adopted the proposal in part. Public participation in the making of regulations is required under Article 118 of the Constitution and the Statutory Instruments Act, Cap. 2A. The Committee resolved that regulations shall provide for the reporting of violations and for periodic reporting by the Cabinet Secretary on implementation and enforcement.

88) Ms. Phanice Muchina Makunda submitted as follows:

1233. **Amend the Bill** to ban the manufacture, marketing, distribution and sale of nicotine pouches.

Justification: Ms. Makunda submitted few adult smokers use nicotine pouches, yet use is high among university students who have low smoking rates. She argued that introducing and marketing nicotine pouches is a deliberate move by the tobacco industry to target youth, adolescents and children and to make the next generation of tobacco users addicted. These groups are especially open to nicotine addiction and to its harmful effects on the developing brain. A ban would also protect children and adolescents, who now have low rates of use, from starting and becoming addicted to these products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1234. **Amend the Bill** to ban the manufacture, marketing, sale and distribution of shisha products.
Justification: Ms. Makunda noted that shisha is currently banned under Regulations made under the Public Health Act. She argued that placing the ban in the Tobacco Control Act would allow a higher fine for manufacture, distribution and sale, one high enough to deter offenders, and would further protect young people from shisha use.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1235. **Amend Section 7** on the Tobacco Control Fund to provide for the Fund to be disbursed to counties, other government ministries, departments and agencies with tobacco control roles, research organisations and civil society.
Justification: Ms. Makunda noted that enforcing tobacco control measures is a devolved function, yet the Ministry of Health is not devolving money from the Fund to support county enforcement programmes. She added that some tasks of the Fund, such as research and public awareness, are delivered better by research organisations and civil society organisations.
Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

1236. **Strengthen the proposed measures that restrict minors' access to tobacco** products by increasing the distance within which marketing is not allowed from 100 metres to 300 metres, and by raising the age below which a person may not access tobacco products from 18 to 21 years.
Justification: Ms. Makunda submitted this would align tobacco control laws with the proposed alcohol control laws, which also provide for 300 metres and 21 years, and would make enforcement easier. She noted that the adolescent brain keeps developing until the age of 25, so raising the age of access to 21 gives adolescents three more years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

89) Mr. Victor Karanja Ndegwa submitted as follows:

1237. **Reject, or substantially revise, the proposed restrictions on flavours.**

Justification: Mr. Ndegwa submitted the restrictions do not reflect market realities. Flavoured nicotine products are a key preference for adult consumers, especially those moving away from traditional cigarettes. A blanket restriction will not remove demand. It will instead push consumers to the black market or back to combustible tobacco, which weakens both consumer safety and public health goals.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

1238. **Reject, or substantially revise, the proposed dual licensing and registration requirements.**

Justification: Mr. Ndegwa submitted that requiring traders to get both county licences and separate approvals from the Ministry of Health creates needless duplication. It raises compliance costs and the administrative burden, especially for small-scale and youth-led enterprises. It risks stifling legitimate business while leaving room for unregulated operators.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

1239. **Amend the Bill to apply proportionate regulation that tells product categories apart, instead of treating all tobacco and nicotine products as equally harmful.**

Justification: Mr. Ndegwa argued that effective regulation should distinguish between product categories and balance public health protection with consumer choice and economic sustainability.

Committee Resolution: The Committee did not adopt the proposal. The WHO FCTC does not provide for a statutory risk continuum, and the Bill already addresses product risk through the pre-market approval and testing regime in sections 14C–14I, under which each product is assessed individually.

90) Mr. Eric Kago of Kago Close, Itanga Road, Nairobi, submitted as follows:

1240. Amend the Title to read "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, **nicotine pouches** and related products, and for connected purposes."

Justification: Mr. Kago argued that this brings the title into line with the substances and products expressly dealt with in the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

1241. Under **Clause 3** (section 2 definition of "nicotine pouch"); **Clause 12** (proposed section 14B); and consequential references in **Clauses 16 and 23** and any other clause that regulates, permits or assumes lawful sale of nicotine pouches: **retain and refine** the definition of "**nicotine pouch**" in section 2 for enforcement clarity, but **delete** proposed section 14B in its current form and replace it with an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." Further, delete all consequential references that presuppose lawful sale or display of nicotine pouches, including in online sales and retail warning provisions, save only where reference is necessary for seizure, enforcement or offence provisions.

Justification: Mr. Kago averred that a prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to conceal, easy to use in smoke-free spaces, and often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified nicotine pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk. WHO has also called for urgent action to ban flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and entrench dependence, especially among children and young people.

Retaining a clear definition while prohibiting the product closes loopholes, supports seizure and prosecution, and prevents the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1242. **Under Clause 3 (definitions:** "ingredients"): retain the expanded definition, but expressly add "constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use", and require disclosure of device-component emissions.

Justification: Mr. Kago noted that this should be widened beyond ingredients physically present in the product at the point of sale. For novel nicotine products, major risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the bottled liquid or pouch contents matter, even where the actual inhaled aerosol contains additional toxicants. The better approach is to regulate both product contents and product disclosures, including emissions and contaminants released in normal use. That aligns the Bill with modern product-regulation practice and makes later standards on testing, approvals, and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-

products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1243. **Under Clause 3 definition of "advertisement":** Insert new definitions for "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha", and "shisha smoking" as follows:

"**aerosol**" means the emission which is discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat;

"**flavouring agent**" means any ingredient or additive other than tobacco, that is added to a tobacco product regardless of its source and—

(a) delivered as an accessory to, or as a component of a tobacco product;

(b) enhances the use of a tobacco product; or facilitates the appeal and addiction to a tobacco product.

"plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardized colour and font style;

"principal display area" means the surfaces of any tobacco product package that may be displayed or visible under normal conditions of sale and, in the case of—

(a) box type packages, two equal sized largest surface areas of the box that may be displayed or visible under normal conditions of sale or use;

(b) pouch type packages, the entire surface area of the pack that may be displayed or visible under the normal conditions of sale or use;

(c) conical or cylindrical type of packages, the entire curved area of the pack that may be displayed or visible under normal conditions of sale or use; or any other form or type of package, the entire surface area of the pack that may be displayed or visible under normal conditions of sale or use;

"shisha" includes tobacco products that may be flavoured or non-flavoured that are consumed using a single or multi-stemmed smoking instrument that contains water or other liquid through which the smoke passes before reaching the smoker and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours including apple, grape, guava, lemon and mint; and

"shisha smoking" means a form of consumption of shisha that utilises a single or multi-stemmed smoking instrument to smoke shisha where the smoke is designed to pass through water or other liquid before reaching the smoker.

Justification: He submitted that this is intended to close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1244. **Under Clause 3 definition of "smoking":** Retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.

Justification: He asserted the definition should close the common loophole under which seller's market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. WHO states that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1245. **Under Clause 3 definition of "tobacco product" and "characterising flavour":** Retain and strengthen by defining nicotine analogues functionally, and by extending "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.

Justification: He asserted that industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling

additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy.

WHO and the FCTC Secretariat have recently called for bans on ingredients that increase **attractiveness and palatability**. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1246. **Under Clause 5 (Tobacco Control Advisory Committee):** The Bill replaces the Board with the Tobacco Control Advisory Committee and includes a Kenya National Chamber of Commerce and Industry nominee while adding conflict-of-interest disqualifications. He therefore proposed the following, **THAT:**

Remove the KNCCI/business representative seat. Add mandatory public disclosure of interests, minutes, agendas and all meetings with industry; prohibit gifts, partnerships and non-essential interactions; and require recusals backed by sanctions.

The clause reading "One person with expertise on matters relating to tobacco nominated by the Council of Governors" be amended to read: "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health."
The clause reading "One person representing NGOs involved in tobacco control" be amended to require nomination by the Cabinet Secretary for Health.
Justification: He averred that the business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures.
Article 5.3 requires protection of public health policies from the commercial and other vested interests of the tobacco industry. The current conflict-of-interest wording is useful but insufficient if the Committee still institutionalises an industry-adjacent nomination route. The safer model is to remove the seat altogether and legislate transparency, limited interactions and enforceable recusals. The Supreme Court has already upheld strong tobacco-control regulations, including limits on interactions between public authorities and the tobacco industry.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1247. **Under Clause 7 (solatium compensatory contribution):** Insert a statutory floor: not less than 2% of the ex-factory value or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation. Require annual publication of collections and use of the Fund. Amend section 7(4) to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support. Amend section 7(4) to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support.
Further, since there is no clear statutory disbursement framework for the Fund, insert a new subsection providing those regulations be made for disbursement of the Fund by the Cabinet Secretary under the TCA to MDAs, academic and research institutions, county governments, and Kenyan CSOs engaged in tobacco control. Renumber the current subsection (5) as subsection (6).
Justification: He asserted that leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure. Public reporting is also necessary so the Fund is visibly tied to health protection rather than being treated as a negotiable levy.
As with regard to disbursement of the fund, the Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public

education and enforcement. The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards. At the same time, the Fund remains subject to the broader public finance framework.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

1248. **Under Clause 10 (tax and price policies): Since** the Bill mandates tax review, inflation adjustment, prevention of illicit trade, exclusion from duty-free zones and allocation of part of revenue to NCD prevention and control, **therefore**, retain and strengthen by requiring that tobacco taxes move to at least 75% of retail price, with annual adjustment for inflation and income growth; expressly earmark a defined share for tobacco control, cessation and NCD treatment.

Justification: He averred that taxation is the single most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats the highest standard as taxes exceeding 75% of price and emphasises the importance of maintaining affordability pressure over time. If taxes are not indexed to both inflation and income growth, products can become cheaper in real terms and youth access rises. Revenue earmarking also answers an implementation problem: strong laws fail when enforcement, cessation and surveillance remain unfunded.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1249. **Under Clause 12 (new section 14A: ENDS /e-cigarettes)**: Since the Bill adopts a permissive model allowing ENDS if they comply with product limits on volume, nicotine

concentration, additives, purity, child-proofing and leakage control, therefore, adopt a public-health-maximal position: prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, if Parliament retains them, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets, and a lower nicotine cap of not more than 10 mg/mL.
Justification: He noted that the present text normalises market entry for an addictive product class whose public-health risks remain substantial. WHO states plainly that e-cigarettes are harmful, are not safe, expose bystanders to harmful aerosol, and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU 20 mg/mL / 10 mL / 2 mL framework is a minimum regulatory floor, not a best-practice ceiling. Several developed jurisdictions have moved further by restricting flavours, channels of sale or device types, and both the United Kingdom and Belgium have now prohibited disposable vapes. Kenya should not lock a permissive baseline into primary legislation.
Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1250. **Under Clause 12 (new section 14B: nicotine pouches)**: **Since** the Bill permits nicotine pouches subject to child-proofing, dose consistency and a cap of 20 mg per pouch, **therefore**:

i. prohibit non-therapeutic nicotine pouches. In the alternative, regulate them exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the maximum nicotine content to not more than 4 mg per pouch.
ii. Replace current 14(B) with the following: No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch. A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Justification: He noted that Nicotine pouches are designed for discreet use, are easy to conceal, and are marketed in flavours and formats that strongly appeal to adolescents and young adults. High-dose pouches accelerate dependence and create a misleading image of a cleaner, lower-risk product even though the addiction risk remains substantial. Research already shows that a sizeable minority of young adults are willing to try nicotine pouches and that advertising exposure and favourable perceptions are material drivers of use. If Parliament does not prohibit them, it should at minimum refuse a 20 mg cap and regulate them as strictly as other nicotine products.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete

ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1251. **Under Clause 12 (new sections 14C–14I: approval, testing, listing, bans): Since** the Bill creates pre-market approval, sample testing by KEBS, approval decisions, recall/withdrawal, a ban power and a publication requirement for approved or banned products, **therefore**: retain and strengthen by requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval/refusal, and a clear appeal and recall process.

Justification: He averred that this is one of the Bill's strongest architecture provisions and should be defended. However, a product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and legal compliance before market entry and throughout the product's life cycle. A public register supports consumer protection, customs enforcement and county licensing. Independent testing is especially important for novel nicotine products because industry-submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1252. **Under Clause 12 (new section 14J: additives and characterising flavours): Since** the Bill prohibits a set of additives and characterising flavours, including those creating an impression of health benefit, increasing toxicity or addictiveness, colouring emissions, facilitating inhalation or creating a characterising flavour, **therefore**: retain and strengthen by expressly covering menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation across all tobacco and nicotine products.

Justification: He explained that this clause should be defended as a core youth-protection measure. WHO and the FCTC Secretariat now explicitly call for urgent action against flavours and other design features that increase attractiveness and palatability. Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. A comprehensive ban must therefore be sensory-effect based, not merely
name-based. The Netherlands' move to tobacco-flavour-only e-liquids and Belgium's move toward tighter vape controls show that developed jurisdictions are moving in the same direction, not away from it.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1253. **Under Clause 13 (section 15: youth-appealing designs and sales buffer): Since** the Bill prohibits youth-appealing designs and bars sales within 100 metres of places primarily serving persons under 18, **therefore**: retain the design prohibition and increase the minimum sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. **And further**, amend section 15(1), (3), (5)(a), (5)(b), and (5A) by replacing "eighteen" with "twenty-one".

Justification: He asserted that the design ban is sound and should be preserved. The distance buffer, however, is too low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children. Kenya already recognises a 300-metre public-health buffer in alcohol-control law for learning institutions. Using the same benchmark here improves coherence in child-protection legislation and gives administrators and courts a familiar standard. A wider buffer also reduces retailer clustering and the routine normalisation of nicotine products near schools.

Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

1254. **Under Clause 16 (new section 19A: online sales): Since** the Bill prohibits online sale or offer for sale of tobacco products, nicotine pouches and ENDS, **therefore**: retain and strengthen by imposing duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: He clarified that a simple ban is necessary but not sufficient. Online tobacco and vape commerce often shifts to social media, messaging channels, cross-border websites and intermediary platforms. Without platform obligations, traceability and takedown mechanisms, enforcement becomes reactive and uneven. Comparative practice shows that governments now treat online sales and cross-border e-commerce as a core regulatory frontier. Belgium publicly reports aggressive enforcement against unlawful online vape sales, while the Netherlands prohibits cross-border online sales of tobacco and e-cigarette products. Kenya should legislate the enforcement chain, not just the prohibited act.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1255. **Under Clauses 17 and 19 (county licensing and national registration): Since** the Bill introduces county licensing of premises and national registration of dealers, **therefore**: retain the dual public-health gatekeeping model, but require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.

Justification: He explained that County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks. This is also consistent with the supply-chain control logic of the Illicit Trade Protocol, which treats licensing, record-keeping and traceability as core anti-diversion tools.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

1256. **Under Clause 18 and Clause 23 (pack warnings, plain packaging, retail warnings): Since** the Bill requires 75% front-and-back warnings, plain packaging by regulation, and point-of-sale warnings for ENDS and nicotine pouches, **therefore**: defend the 75% warning rule and plain-packaging power. Extend large pictorial warnings and standardised packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.

Justification: He explained that this is a major public-health gain and should not be diluted in the National Assembly. WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognises plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising.

Evidence reviews, including Cochrane, support the conclusion that standardised packaging reduces appeal and may contribute to lower smoking prevalence. Novel products should not be allowed to preserve branding intensity simply because they sit outside traditional cigarette packaging norms.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1257. **Under Clauses 20 and 21 (digital and indirect advertising/promotion): Since** the Bill extends advertising controls to online and digital platforms and captures influencer or brand-ambassador advertising, plus free-sample promotion of ENDS and nicotine pouches, **therefore**: expand into a full-spectrum TAPS ban covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, CSR, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.

Justification: He averred that this should be treated as a modern Article 13 clause, not a narrow social-media amendment. The industry now markets through ecosystems: creators,

event culture, sponsorship, discounts, product seeding, hashtag campaigns and indirect brand extension. A partial digital ban will be outpaced almost immediately. Article 13 guidance favours a comprehensive ban because partial bans merely displace promotion from one channel to another.

WHO's 2025 campaign also focused directly on how flavours, design and marketing tactics are used to addict youth and normalise nicotine use.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1258. **Under Clauses 22 and 24 (smoke-free places and designated smoking areas): Since** the Bill expands smoke-free places but still preserves designated smoking areas subject to strict engineering standards, **therefore**: delete the designated-smoking-area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with specified outdoor smoke/vape-free perimeters around schools, hospitals, playgrounds and public-building entrances.

Justification: He averred that this is the clearest place where the Bill still falls below best practice. The Article 8 guidelines are categorical: there is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Once ENDS and heated products are included, retaining designated rooms also creates an enforcement fiction because aerosol drift, leakage and worker exposure remain. Kenya should move to a clean 100% rule. The Netherlands has explicitly rejected smoking rooms as facilitating smoking and normalising the behaviour.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1259. **Under Clause 19 (new section 21B: single-use plastics and disposable products)**: **Since** the Bill prohibits tobacco products, packaging or disposable electronic delivery systems that use single-use plastics, **therefore**: retain and strengthen by expressly banning disposable vapes as a product class, imposing take-back and producer-responsibility obligations for batteries and device waste, and authorising seizure and destruction of non-compliant stock.

Justification: He asserted that this is a strong environmental-health clause and should be defended. Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste. Comparative developed-country practice is now moving in this direction: the United Kingdom bans single-use vapes, and Belgium has totally banned the sale of disposable electronic cigarettes. Kenya should make the environmental rationale explicit and link it to public-health enforcement powers so the clause is not reduced to a symbolic waste measure.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with

the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1260. **Under New Clause for a new Section 21C: Since** No express prohibition on shisha products in the Bill, **therefore**: insert a new section 21C prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.
Justification: He averred that this complements the proposed definitional changes on shisha.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1261. **Under Clause 22: Since** the Bill still preserves designated smoking areas in some places, **therefore**, the DSA model be deleted entirely and move to 100% smoke-free indoor and enclosed public places. In the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.
Justification: He offered no justification
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1262. **Under Clause 24/ Section 35 (2)(b) (iii): Since** DSA certification is engineer-based, **therefore**: If DSAs are retained, require not only certification by a qualified engineer but also approval by the county public health officer, with inspection and approval fees.
Justification: He offered no justification
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

1263. **Under Clause 26 (section 53: regulation-making power)**: **Since** The Bill broadens regulation-making powers for e-liquid constituents, batteries, emissions, testing, approvals, recalls, additives and package health messages, **therefore**: Further expand section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardised packaging rules, and an express bar on delegating state regulatory functions to the tobacco industry.
Justification: He averred that this Section 53 should be drafted as the Bill's enforcement engine. The clearer Parliament authorises disclosure, traceability, recall, seizure, packaging, and supply-chain controls, the harder it will be for later regulations to be challenged as ultra vires.

The Illicit Trade Protocol is especially important here: it treats licensing, record-keeping, due diligence, tracking and tracing as state functions for securing the supply chain. An express non-delegation clause is prudent because industry-controlled traceability or compliance systems create exactly the conflict Article 5.3 seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

91) Mr. Henry Muema Ndata, submitted as follows:

1264. Amend the Title to read "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, **nicotine pouches** and related products, and for connected purposes."

Justification: Mr. Ndata argued that this brings the title into line with the substances and products expressly dealt with in the Bill.

Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

1265. Under **Clause 3** (section 2 definition of "nicotine pouch"); **Clause 12** (proposed section 14B); and consequential references in **Clauses 16 and 23** and any other clause that regulates, permits or assumes lawful sale of nicotine pouches: retain and refine the definition of "**nicotine pouch**" in section 2 for enforcement clarity, but **delete** proposed section 14B in its current form and replace it with an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." Further, delete all consequential references that presuppose lawful sale or display of nicotine pouches, including in online sales and retail warning provisions, save only where reference is necessary for seizure, enforcement or offence provisions.

Justification: Mr. Ndata averred that a prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to conceal, easy to use in smoke-free spaces, and often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified nicotine pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk. WHO has also called for urgent action to ban flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and entrench dependence, especially among children and young people.

Retaining a clear definition while prohibiting the product closes loopholes, supports seizure and prosecution, and prevents the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1266. **Under Clause 3 (definitions:** "ingredients"): retain the expanded definition, but expressly add "constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use", and require disclosure of device-component emissions.

Justification: Mr. Ndata noted that this should be widened beyond ingredients physically present in the product at the point of sale. For novel nicotine products, major risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the bottled liquid or pouch contents matter, even where the actual inhaled aerosol contains additional toxicants. The better approach is to regulate both product contents and product disclosures, including emissions and contaminants released in normal use. That aligns the Bill with modern product-regulation practice and makes later standards on testing, approvals, and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1267. **Under Clause 3 definition of "advertisement":** Insert new definitions for "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha", and "shisha smoking" as follows:

"**aerosol**" means the emission which is discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat;

"**flavouring agent**" means any ingredient or additive other than tobacco, that is added to a tobacco product regardless of its source and—

(a) delivered as an accessory to, or as a component of a tobacco product;

(b) enhances the use of a tobacco product; or facilitates the appeal and addiction to a tobacco product.

"plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardized colour and font style;

"principal display area" means the surfaces of any tobacco product package that may be displayed or visible under normal conditions of sale and, in the case of—

(d) box type packages, two equal sized largest surface areas of the box that may be displayed or visible under normal conditions of sale or use;

(e) pouch type packages, the entire surface area of the pack that may be displayed or visible under the normal conditions of sale or use;

(f) conical or cylindrical type of packages, the entire curved area of the pack that may be displayed or visible under normal conditions of sale or use; or any other form or type of package, the entire surface area of the pack that may be displayed or visible under normal conditions of sale or use;

"shisha" includes tobacco products that may be flavoured or non-flavoured that are consumed using a single or multi-stemmed smoking instrument that contains water or other liquid through which the smoke passes before reaching the smoker and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours including apple, grape, guava, lemon and mint; and

"shisha smoking" means a form of consumption of shisha that utilises a single or multi-stemmed smoking instrument to smoke shisha where the smoke is designed to pass through water or other liquid before reaching the smoker.

Justification: He submitted that this is intended to close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1268. **Under Clause 3 definition of "smoking":** Retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.

Justification: He asserted the definition should close the common loophole under which seller's market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. WHO states that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1269. **Under Clause 3 definition of "tobacco product" and "characterising flavour":** Retain and strengthen by defining nicotine analogues functionally, and by extending "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.

Justification: He asserted that industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling

additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy.

WHO and the FCTC Secretariat have recently called for bans on ingredients that increase **attractiveness and palatability**. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1270. **Under Clause 5 (Tobacco Control Advisory Committee):** The Bill replaces the Board with the Tobacco Control Advisory Committee and includes a Kenya National Chamber of Commerce and Industry nominee while adding conflict-of-interest disqualifications. He therefore proposed the following, **THAT:**

Remove the KNCCI/business representative seat. Add mandatory public disclosure of interests, minutes, agendas and all meetings with industry; prohibit gifts, partnerships and non-essential interactions; and require recusals backed by sanctions.

The clause reading "One person with expertise on matters relating to tobacco nominated by the Council of Governors" be amended to read: "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health."

The clause reading "One person representing NGOs involved in tobacco control" be amended to require nomination by the Cabinet Secretary for Health.

Justification: He averred that the business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures.

Article 5.3 requires protection of public health policies from the commercial and other vested interests of the tobacco industry. The current conflict-of-interest wording is useful but insufficient if the Committee still institutionalises an industry-adjacent nomination route. The safer model is to remove the seat altogether and legislate transparency, limited interactions and enforceable recusals. The Supreme Court has already upheld strong tobacco-control regulations, including limits on interactions between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1271. **Under Clause 7 (solatium compensatory contribution):** Insert a statutory floor: not less than 2% of the ex-factory value or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation. Require annual publication of collections and use of the Fund. Amend section 7(4) to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support. Amend section 7(4) to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support.

Further, since there is no clear statutory disbursement framework for the Fund, insert a new subsection providing those regulations be made for disbursement of the Fund by the Cabinet Secretary under the TCA to MDAs, academic and research institutions, county governments,

and Kenyan CSOs engaged in tobacco control. Renumber the current subsection (5) as subsection (6).

Justification: He asserted that leaving the contribution entirely open-ended invites lobbying and makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure. Public reporting is also necessary so the Fund is visibly tied to health protection rather than being treated as a negotiable levy.

As with regard to disbursement of the fund, the Tobacco Control Fund is a sector-specific statutory fund established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement. The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards. At the same time, the Fund remains subject to the broader public finance framework.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. The Committee did not adopt the proposed amendment to section 7(4). Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes. with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to authorise the funding of civil society organisations engaged in tobacco control, as expanding the Fund's scope to directly finance civil society organisations introduces a parallel funding structure outside established budgetary allocations for state agencies, contrary to the Public Finance Management Act, Cap. 412A.

1272. **Under Clause 10 (tax and price policies): Since** the Bill mandates tax review, inflation adjustment, prevention of illicit trade, exclusion from duty-free zones and allocation of part of revenue to NCD prevention and control, **therefore**, retain and strengthen by requiring that tobacco taxes move to at least 75% of retail price, with annual adjustment for inflation and income growth; expressly earmark a defined share for tobacco control, cessation and NCD treatment.

Justification: He averred that taxation is the single most effective and cost-effective demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats the highest standard as taxes exceeding 75% of price and emphasises the importance of maintaining affordability pressure over time. If taxes are not indexed to both

inflation and income growth, products can become cheaper in real terms and youth access rises. Revenue earmarking also answers an implementation problem: strong laws fail when enforcement, cessation and surveillance remain unfunded.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1273. **Under Clause 12 (new section 14A: ENDS /e-cigarettes): Since** the Bill adopts a permissive model allowing ENDS if they comply with product limits on volume, nicotine concentration, additives, purity, child-proofing and leakage control, **therefore**, adopt a public-health-maximal position: prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, if Parliament retains them, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets, and a lower nicotine cap of not more than 10 mg/mL.

Justification: He noted that the present text normalises market entry for an addictive product class whose public-health risks remain substantial. WHO states plainly that e-cigarettes are harmful, are not safe, expose bystanders to harmful aerosol, and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU 20 mg/mL / 10 mL / 2 mL framework is a minimum regulatory floor, not a best-practice ceiling. Several developed jurisdictions have moved further by restricting flavours, channels of sale or device types, and both the United Kingdom and Belgium have now prohibited disposable vapes. Kenya should not lock a permissive baseline into primary legislation.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1274. **Under Clause 12 (new section 14B: nicotine pouches): Since** the Bill permits nicotine pouches subject to child-proofing, dose consistency and a cap of 20 mg per pouch, **therefore**:

iii. prohibit non-therapeutic nicotine pouches. In the alternative, regulate them exactly like tobacco products, ban flavours, require plain packaging, prohibit all displays and online sales, and reduce the maximum nicotine content to not more than 4 mg per pouch.

iv. Replace current 14(B) with the following: No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch. A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding

one million shillings or to imprisonment for a term not exceeding two years, or to both.

Justification: He noted that Nicotine pouches are designed for discreet use, are easy to conceal, and are marketed in flavours and formats that strongly appeal to adolescents and young adults. High-dose pouches accelerate dependence and create a misleading image of a cleaner, lower-risk product even though the addiction risk remains substantial. Research already shows that a sizeable minority of young adults are willing to try nicotine pouches and that advertising exposure and favourable perceptions are material drivers of use. If Parliament does not prohibit them, it should at minimum refuse a 20 mg cap and regulate them as strictly as other nicotine products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1275. **Under Clause 12 (new sections 14C–14I: approval, testing, listing, bans): Since** the Bill creates pre-market approval, sample testing by KEBS, approval decisions, recall/withdrawal, a ban power and a publication requirement for approved or banned products, **therefore**: retain and strengthen by requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval/refusal, and a clear appeal and recall process.

Justification: He averred that this is one of the Bill's strongest architecture provisions and should be defended. However, a product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and legal compliance before market entry and throughout the product's life cycle. A public register supports consumer protection, customs enforcement and county licensing. Independent testing is especially important for novel nicotine products because industry-submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1276. **Under Clause 12 (new section 14J: additives and characterising flavours): Since** the Bill prohibits a set of additives and characterising flavours, including those creating an impression of health benefit, increasing toxicity or addictiveness, colouring emissions, facilitating inhalation or creating a characterising flavour, **therefore**: retain and strengthen by expressly covering menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation across all tobacco and nicotine products.

Justification: He explained that this clause should be defended as a core youth-protection measure. WHO and the FCTC Secretariat now explicitly call for urgent action against flavours and other design features that increase attractiveness and palatability. Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. A comprehensive ban must therefore be sensory-effect based, not merely
name-based. The Netherlands' move to tobacco-flavour-only e-liquids and Belgium's move toward tighter vape controls show that developed jurisdictions are moving in the same direction, not away from it.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1277. **Under Clause 13 (section 15: youth-appealing designs and sales buffer): Since** the Bill prohibits youth-appealing designs and bars sales within 100 metres of places primarily serving persons under 18, **therefore**: retain the design prohibition and increase the minimum sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and other premises primarily serving children. **And further**, amend section 15(1), (3), (5)(a), (5)(b), and (5A) by replacing "eighteen" with "twenty-one".

Justification: He asserted that the design ban is sound and should be preserved. The distance buffer, however, is too low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children. Kenya already recognises a 300-metre public-health buffer in alcohol-control law for learning institutions. Using the same benchmark here improves coherence in child-protection legislation and gives administrators and courts a familiar standard. A wider buffer also reduces retailer clustering and the routine normalisation of nicotine products near schools.

Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

1278. **Under Clause 16 (new section 19A: online sales): Since** the Bill prohibits online sale or offer for sale of tobacco products, nicotine pouches and ENDS, **therefore**: retain and strengthen by imposing duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings, preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.

Justification: He clarified that a simple ban is necessary but not sufficient. Online tobacco and vape commerce often shifts to social media, messaging channels, cross-border websites and intermediary platforms. Without platform obligations, traceability and takedown mechanisms, enforcement becomes reactive and uneven. Comparative practice shows that governments now treat online sales and cross-border e-commerce as a core regulatory

frontier. Belgium publicly reports aggressive enforcement against unlawful online vape sales, while the Netherlands prohibits cross-border online sales of tobacco and e-cigarette products. Kenya should legislate the enforcement chain, not just the prohibited act.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1279. **Under Clauses 17 and 19 (county licensing and national registration): Since** the Bill introduces county licensing of premises and national registration of dealers, **therefore**: retain the dual public-health gatekeeping model, but require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.

Justification: He explained that County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum-shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of licence outcomes help identify front structures, repeat offenders and industry-linked retail networks. This is also consistent with the supply-chain control logic of the Illicit Trade Protocol, which treats licensing, record-keeping and traceability as core anti-diversion tools.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

1280. **Under Clause 18 and Clause 23 (pack warnings, plain packaging, retail warnings): Since** the Bill requires 75% front-and-back warnings, plain packaging by regulation, and point-of-sale warnings for ENDS and nicotine pouches, **therefore**: defend the 75% warning rule and plain-packaging power. Extend large pictorial warnings and standardised packaging to ENDS and nicotine pouches; require a quitline/cessation message and poison warning for liquid nicotine; and prohibit any branded display or menu-board style counter-signage at retail.

Justification: He explained that this is a major public-health gain and should not be diluted in the National Assembly. WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognises plain packaging as a legitimate means of reducing product appeal and preventing the pack from operating as advertising.

Evidence reviews, including Cochrane, support the conclusion that standardised packaging reduces appeal and may contribute to lower smoking prevalence. Novel products should not be allowed to preserve branding intensity simply because they sit outside traditional cigarette packaging norms.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings

including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1281. **Under Clauses 20 and 21 (digital and indirect advertising/promotion): Since** the Bill extends advertising controls to online and digital platforms and captures influencer or brand-ambassador advertising, plus free-sample promotion of ENDS and nicotine pouches, **therefore**: expand into a full-spectrum TAPS ban covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, CSR, discounts, loyalty schemes, giveaway codes, brand stretching, user-generated promotional competitions and point-of-sale visibility.

Justification: He averred that this should be treated as a modern Article 13 clause, not a narrow social-media amendment. The industry now markets through ecosystems: creators, event culture, sponsorship, discounts, product seeding, hashtag campaigns and indirect brand extension. A partial digital ban will be outpaced almost immediately. Article 13 guidance favours a comprehensive ban because partial bans merely displace promotion from one channel to another.

WHO's 2025 campaign also focused directly on how flavours, design and marketing tactics are used to addict youth and normalise nicotine use.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1282. **Under Clauses 22 and 24 (smoke-free places and designated smoking areas): Since** the Bill expands smoke-free places but still preserves designated smoking areas subject to strict engineering standards, **therefore**: delete the designated-smoking-area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and hospitality venues, with specified outdoor smoke/vape-free perimeters around schools, hospitals, playgrounds and public-building entrances.

Justification: He averred that this is the clearest place where the Bill still falls below best practice. The Article 8 guidelines are categorical: there is no safe level of exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Once ENDS and heated products are included, retaining designated rooms also creates an enforcement fiction because aerosol drift, leakage and worker exposure remain. Kenya should move to a clean 100% rule. The Netherlands has explicitly rejected smoking rooms as facilitating smoking and normalising the behaviour.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1283. **Under Clause 19 (new section 21B: single-use plastics and disposable products): Since** the Bill prohibits tobacco products, packaging or disposable electronic delivery systems

that use single-use plastics, **therefore**: retain and strengthen by expressly banning disposable vapes as a product class, imposing take-back and producer-responsibility obligations for batteries and device waste, and authorising seizure and destruction of non-compliant stock.
Justification: He asserted that this is a strong environmental-health clause and should be defended. Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste. Comparative developed-country practice is now moving in this direction: the United Kingdom bans single-use vapes, and Belgium has totally banned the sale of disposable electronic cigarettes. Kenya should make the environmental rationale explicit and link it to public-health enforcement powers so the clause is not reduced to a symbolic waste measure.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1284. **Under New Clause for a new Section 21C: Since** No express prohibition on shisha products in the Bill, **therefore**: insert a new section 21C prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.
Justification: He averred that this complements the proposed definitional changes on shisha.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1285. **Under Clause 22: Since** the Bill still preserves designated smoking areas in some places, **therefore**, the DSA model be deleted entirely and move to 100% smoke-free indoor and enclosed public places. In the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.
Justification: He offered no justification
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1286. **Under Clause 24/ Section 35 (2)(b) (iii): Since** DSA certification is engineer-based, **therefore**: If DSAs are retained, require not only certification by a qualified engineer but also approval by the county public health officer, with inspection and approval fees.
Justification: He offered no justification

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

1287. **Under Clause 26 (section 53: regulation-making power)**): **Since** the Bill broadens regulation-making powers for e-liquid constituents, batteries, emissions, testing, approvals, recalls, additives and package health messages, **therefore**: Further expand section 53 to authorise track-and-trace, due diligence, retailer-density caps, mandatory record-keeping, public registers, seizure and destruction, environmental obligations, standardised packaging rules, and an express bar on delegating state regulatory functions to the tobacco industry.
Justification: He averred that this Section 53 should be drafted as the Bill's enforcement engine. The clearer Parliament authorises disclosure, traceability, recall, seizure, packaging, and supply-chain controls, the harder it will be for later regulations to be challenged as ultra vires. The Illicit Trade Protocol is especially important here: it treats licensing, record-keeping, due diligence, tracking and tracing as state functions for securing the supply chain. An express non-delegation clause is prudent because industry-controlled traceability or compliance systems create exactly the conflict Article 5.3 seeks to avoid.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

92) Ms. Amani Maria submitted as follows:

1288. **Title**: Amend title to read: "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.
Committee Resolution: The Committee adopted the proposal in part. The Bill prohibits nicotine pouches under proposed section 14B.

1289. **Amend Clause 3** (section 2 definition of "nicotine pouch"); Clause 12 (proposed section 14B); and consequential references in Clauses 16 and 23 and any other clause that regulates, permits or assumes lawful sale of nicotine: Retain and refine the definition of "nicotine pouch" in section 2 for enforcement clarity, but delete proposed section 14B in its current form and replace it with an express prohibition: "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." Further, delete all consequential references that presuppose lawful sale or display of nicotine pouches, including in online sales and retail warning provisions, save only where reference is necessary for seizure, enforcement or offence provisions.
Justification: Amani Maria submitted that a prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to conceal, easy to use in smoke-free spaces, and often marketed in flavours and formats that increase youth appeal and

addiction risk. WHO has identified nicotine pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco free," which may mislead consumers about risk. WHO has also called for urgent action to ban flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and entrench dependence, especially among children and young people. Retaining a clear definition while prohibiting the product closes loopholes, supports seizure and prosecution, and prevents the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1290. **Amend Clause 3** definition of "advertisement": Bill introduces a shorter new definition of advertisement: Reject the replacement definition. Retain the existing broad definition and add a new limb: "promotion of a tobacco product by means of its brand characteristics." "aerosol" means the emission which is discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat; "flavouring agent" means any ingredient or additive other than tobacco, that is added to a tobacco product regardless of its source and—(a)delivered as an accessory to, or as a component of a tobacco product; (b)enhances the use of a tobacco product; or facilitates the appeal and addiction to a tobacco product. "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardized colour and font style; "principal display area" means the surfaces of any tobacco product package that may be displayed or visible under normal conditions of sale and, in the case of—(a)box type packages, two equal sized largest surface areas of the box that may be displayed or visible under normal conditions of sale or use

(b)pouch type packages, the entire surface area of the pack that may be displayed or visible under the normal conditions of sale or use;

(c)conical or cylindrical type of packages, the entire curved area of the pack that may be displayed or visible under normal conditions of sale or use; or any other form or type of package, the entire surface area of the pack that may be displayed or visible under normal conditions of sale or use; "shisha" includes tobacco products that may be flavoured or non flavourcd that are consumed using a single or multi-stemmed smoking instrument that contains water or other liquid through which the smoke passes before reaching the smoker and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours including apple, grape, guava, lemon and mint; and "shisha smoking" means a form of consumption of shisha that ulilizcs a single or multi stemmed smoking instrument to smoke shisha where the smoke is designed to pass through water or other liquid before reaching the smoker

Justification: The advocate submitted that this is intended to close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1291. **Amend Clause 3(definitions:** "smoking"): Retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.

Justification: The definition should close the common loophole under which sellers' market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. WHO states that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1292. **Amend Clause 3**(definitions: "tobacco product", "characterising flavour"): Retain and strengthen by defining nicotine analogues functionally, and by extending "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.

Justification: Industry practice now includes chemical reformulation, branding tricks and nontraditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for bans on ingredients that increase attractiveness and palatability. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1293. **Amend Clause 5** (Tobacco Control Advisory Committee) The Bill replaces the Board with the Tobacco Control Advisory Committee and includes a Kenya National Chamber of Commerce and Industry nominee while adding conflict-of-interest disqualifications. Amani Maria proposes the removal of the KNCCI/business representative seat and add mandatory public disclosure of interests, minutes, agendas and all meetings with

industry; prohibit gifts, partnerships and non-essential interactions; and require recusals backed by sanctions. Amani Maria proposes it's amended to "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health. On the one person representing NGOs involved in tobacco control, the advocate wants it amended to require nomination by the Cabinet Secretary for Health.

Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures. Article 5.3 requires protection of public health policies from the commercial and other vested interests of the tobacco industry. The current conflict-of-interest wording is useful but insufficient if the Committee still
institutionalizes an industry adjacent nomination route. The safer model is to remove the seat altogether and legislate transparency, limited interactions and enforceable recusals. The Supreme Court has already upheld strong tobacco-control regulations, including limits on interactions
between public authorities and the tobacco industry.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1294. **Amend Clause 7**(solatium compensatory contribution): Amend section 7(4) to expressly include research, cessation and rehabilitation, public education and awareness, and enforcement support. Instead insert a new subsection providing those regulations be made for disbursement of the Fund by the Cabinet Secretary under the TCA to MDAs, academic and research institutions, county governments, and Kenyan CSOs engaged in tobacco control. Renumber the current subsection (5) as subsection (6)

Justification: Supreme Court upheld the constitutionality of the broader
tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such. A statutory floor secures predictability for prevention, cessation, enforcement and treatment of tobacco-related disease while reducing room for future dilution through administrative pressure. Public reporting is also necessary so the Fund is visibly tied to health protection rather than being treated as a negotiable levy. Amani Maria further opines that as with regard to disbursement of the fund, the Tobacco Control Fund is a sector-specific statutory fund
established under the Tobacco Control Act, administered within the health framework, and directed toward tobacco control objectives such as research, cessation, public education and enforcement. The Act already vests implementation and regulatory authority in the health sector, making the Cabinet Secretary for Health the most appropriate authority to prescribe substantive disbursement criteria, eligible recipients, reporting obligations and accountability safeguards. At the same time, the Fund
remains subject to the broader public finance framework.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current

expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

1295. **Amend Clause 10**(tax and price policies) The Bill mandates tax review, inflation adjustment, prevention of illicit trade, exclusion from duty-free
zones and allocation of part of revenue to NCD prevention and control.
Justification: Taxation is the single most effective and cost-effective
demand-reduction measure. A clause that merely says tax shall be reviewed is directionally correct but too soft. WHO treats the highest standard as taxes exceeding 75% of price and emphasizes the importance of maintaining affordability pressure over time. If taxes are not indexed to both inflation and income growth, products can become cheaper in real terms and youth access rises. Revenue earmarking also answers an implementation problem: strong laws fail when enforcement, cessation and
surveillance remains unfunded.
Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1296. **Amend Clause 12**(new section 14A: ENDS / e-cigarettes) The Bill adopts a permissive model allowing ENDS if they comply with product limits on volume, nicotine concentration, additives, purity, child-proofing and leakage controls, instead adopt a public health-maximal position: prohibit the manufacture, import, sale and distribution of non-therapeutic ENDS/ENNDS as consumer products. In the alternative, if Parliament retains them, permit only reusable closed systems, tobacco flavour only, no disposable devices, no internet sales, adult-only licensed outlets, and a lower nicotine cap of not more than 10 mg/mL.
Justification: The present text normalizes market entry for an addictive product class whose public health risks remain substantial. WHO states plainly that e cigarettes are harmful, are not safe, expose bystanders to harmful aerosol, and are associated with greatly increased uptake of conventional cigarettes among non-smoking youth. The EU 20 mg/mL / 10 mL / 2 mL framework is a minimum regulatory floor, not a best practice ceiling. Several developed jurisdictions have moved further by restricting
flavours, channels of sale or device types, and both the United Kingdom and Belgium have now prohibited disposable vapes. Kenya should not lock a permissive baseline into primary legislation.
Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market

approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1297. **Amend Clause 12**(new sections 14C–14I: approval, testing, listing, bans) The Bill creates pre-market approval, sample testing by KEBS, approval decisions, recall/withdrawal, a ban power and a publication requirement for approved or banned products. Amani Maria proposes to keep and strengthen by requiring a public health impact statement, independent laboratory testing at the manufacturer's cost, periodic renewal of approvals, a public searchable register, reasons for approval/refusal, and a clear appeal and recall process.

Justification: This is one of the Bill's strongest architecture provisions and should be defended. However, a product-approval regime without public reasoning and independent verification can still be captured or become opaque. The burden should remain on the manufacturer to prove safety, conformity and legal compliance before market entry and throughout the product's life cycle. A public register supports consumer protection, customs enforcement and county licensing. Independent testing is especially important for novel nicotine products because industry-submitted claims on ingredients, emissions and consistency are not self-verifying.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1298. **Clause 12**(new section 14J: additives and characterising flavours), The Bill prohibits a set of additives and characterising flavours, including those creating an impression of health benefit, increasing toxicity or addictiveness, colouring emissions, facilitating inhalation or creating a characterising flavour. Retain and strengthen by expressly covering menthol, cooling agents, sweeteners, concept descriptors, flavour accessories and any ingredient or design feature that increases attractiveness, palatability or ease of inhalation across all tobacco and nicotine products.

Justification: This clause should be defended as a core youth-protection measure. WHO and the FCTC Secretariat now explicitly call for urgent action against flavours and other design features that increase attractiveness and palatability. Partial flavour bans are easy to evade through cooling additives, ambiguous descriptors, accessories and device design. A comprehensive ban must therefore be sensory-effect based, not merely name based. The Netherlands' move to tobacco-flavour-only e-liquids and Belgium's move toward tighter vape controls show that developed jurisdictions are moving in the same direction, not away from it.

Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects

and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1299. **Clause 13**(section 15: youth appealing designs and sales buffer) Minimum age threshold remains 18 years in the affected provisions: Retain the design prohibition and increase the minimum sales buffer from 100 metres to at least 300 metres around schools, child-care facilities, playgrounds and
other premises primarily serving children. Amend section 15(1), (3), (5)(a), (5)(b), and (5A) by replacing "eighteen" with "twenty-one".
Justification: The design ban is sound and should be preserved. The
distance buffer, however, is too low for practical enforcement in dense urban settings and does not adequately reduce the retail visibility and availability of tobacco and nicotine products around children. Kenya already recognizes a 300-metre public health buffer in alcohol-control law for learning institutions. Using the same benchmark here improves coherence in child-protection legislation and gives administrators and courts a familiar standard. A wider buffer also reduces retailer clustering and the routine normalization of nicotine products near schools.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years.

1300. **Clause 16**(new section 19A: online sales): Retain and strengthen Retain and strengthen by imposing duties on platform operators, payment intermediaries and delivery services to remove or block unlawful listings,
preserve transaction data and cooperate with enforcement agencies, including the Communications Authority of Kenya.
Justification: A simple ban is necessary but not sufficient. Online tobacco
and vape commerce often shifts to social media, messaging channels, cross
border websites and intermediary platforms. Without platform obligations, traceability and takedown mechanisms, enforcement becomes reactive and uneven. Comparative practice shows that governments now treat online sales and cross-border e-commerce as a core regulatory frontier. Belgium publicly reports aggressive enforcement against unlawful online vape sales, while the Netherlands prohibits cross-border online sales of tobacco and e-cigarette products. Kenya should legislate the
enforcement chain, not just the prohibited act.
Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1301. **Clauses 17 and 19**(county licensing and national registration): Retain the dual public-health gatekeeping model, but require a unified digital application portal, harmonised data-sharing, annual renewal, beneficial
ownership disclosure, retailer-density controls, and mandatory publication of suspensions and revocations.
Justification: County licensing plus national registration is defensible because it gives both local and national authorities visibility over the supply chain. The risk is operational fragmentation, duplication and forum
shopping unless the statute requires information-sharing and unified administration. Beneficial ownership disclosure and public publication of
licence outcomes help identify front structures, repeat offenders and industry-linked retail networks. This is also consistent with the supply-chain control logic of the Illicit Trade Protocol, which treats licensing,
record-keeping and traceability as core anti diversion tools.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

1302. **Clause 18 and Clause 23**(pack warnings, plain packaging, retail warnings). The Bill requires 75% front-and back warnings, plain packaging by regulation, and point-of-sale warnings for ENDS and nicotine pouches.
Justification: This is a major public-health gain and should not be diluted
in the National Assembly. WHO Article 11 guidance treats large, clear and prominent warnings as essential and recognizes plain packaging as a legitimate means of reducing product appeal and preventing the pack from
operating as advertising. Evidence reviews, including Cochrane, support the conclusion that standardized packaging reduces appeal and may contribute to lower smoking prevalence. Novel products should not be allowed to preserve branding intensity simply because they sit outside
traditional cigarette packaging norms.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1303. **Clause 19**(new section 21B: single-use plastics and disposable products): Retain and strengthen by expressly banning disposable vapes as a product class, imposing take-back and producer responsibility obligations for batteries and device waste, and authorising seizure and destruction of non-compliant stock.
Justification: This is a strong environmental health clause and should be

defended. Disposable vapes are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste. Comparative developed country practice is now moving in this direction: the United Kingdom bans single-use vapes and Belgium has totally banned the sale of disposable electronic cigarettes. Kenya should make the environmental rationale explicit and link it to public-health enforcement powers so the clause is not reduced to a symbolic waste measure.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1304. **Clauses 20 and 21** (digital and indirect advertising / promotion): Expand into a full spectrum TAPS ban covering digital content, cross-border advertising aimed at Kenya, influencer marketing, sponsorship, CSR, discounts, loyalty schemes, giveaway codes, brand stretching, user generated promotional competitions and point-of-sale visibility.

Justification: This should be treated as a modern Article 13 clause, not a narrow social-media amendment. The industry now markets through ecosystems: creators, event culture, sponsorship, discounts, product seeding, hashtag campaigns and indirect brand extension. A partial digital ban will be outpaced almost immediately. Article 13 guidance favours a comprehensive ban because partial bans merely displace promotion from one channel to another. WHO's 2025 campaign also focused directly on how flavours, design and marketing tactics are used to addict youth and normalize nicotine use.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1305. **New Clause for a new Section 21C**; No express prohibition on shisha products in the Bill. Proposing an insertion of a new section 21C prohibiting manufacture, sale, distribution, or importation of shisha products, with a penalty of up to KES 5 million or imprisonment up to 3 years, or both.

Justification: This complements the proposed definitional changes on shisha.

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1306. **Clause 22;** Bill still preserves designated smoking areas in some places. The DSA model be deleted entirely and move to 100% smoke free indoor and enclosed public places. In the alternative, if DSAs are retained, remove aircraft from any place where a DSA may be allowed.

Justification: No justification offered.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1307. **Clause 24/ Section 35 (2) (b) (iii)** DSA certification is engineer based If DSAs are retained, require not only certification by a qualified engineer but also, approval by the county public health officer, with inspection and approval fees.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

1308. **Clauses 22 and 24**(smoke free places and designated smoking areas) Delete the designated-smoking area exception entirely and require 100% smoke-free and vape-free indoor public places, workplaces, public transport and
hospitality venues, with specified outdoor smoke/vape free perimeters
around schools, hospitals, playgrounds and public-building entrances.
Justification: This is the clearest place where the Bill still falls below best
practice. The Article 8 guidelines are categorical: there is no safe level of
exposure to tobacco smoke, and ventilation, filtration and designated rooms do not provide effective protection. Once ENDS and heated products are included, retaining designated rooms also creates an enforcement fiction because aerosol drift, leakage and worker exposure remain. Kenya should move to a clean 100% rule. The Netherlands has explicitly rejected smoking rooms as facilitating smoking and normalizing the behaviour.
Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1309. **Clause 26(section 53:** regulation making power). Amani Maria proposes further expansion of section 53 to authorize track-and trace, due diligence,
retailer-density caps, mandatory record keeping, public registers, seizure and destruction, environmental obligations, standardized packaging rules, and an express bar on delegating state regulatory functions to the tobacco
industry.
Justifications: Section 53 should be drafted as the Bill's enforcement engine. The more clearly Parliament authorizes disclosure, traceability, recall, seizure, packaging and supply-chain controls, the harder it will be for later regulations to be challenged as ultra vires. The Illicit Trade Protocol is especially important here: it treats licensing, record-keeping, due diligence, tracking and tracing as state functions for securing the supply chain. An express non-delegation clause is prudent because industry-controlled traceability or compliance systems create exactly the conflict Article 5.3 seeks to avoid.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

1310. **Amend Section 7** on the Tobacco Control Fund to provide for the Fund to be disbursed to counties, other government ministries, departments and agencies with tobacco control roles, research organisations and civil society.
Justification: Amani Maria noted that enforcing tobacco control measures is a devolved function, yet the Ministry of Health is not devolving money from the Fund to support county enforcement programmes. It was added that some tasks of the Fund, such as research and public awareness, are delivered better by research organisations and civil society organisations.
Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

1311. **Strengthen the proposed measures that restrict minors' access to tobacco products** by increasing the distance within which marketing is not allowed from 100 metres to 300 metres, and by raising the age below which a person may not access tobacco products from 18 to 21 years.
Justification: Amani Maria submitted this would align tobacco control laws with the proposed alcohol control laws, which also provide for 300 metres and 21 years, and would make enforcement easier. It was noted that the adolescent brain keeps developing until the age of 25, so raising the age of access to 21 gives adolescents three more years of protection from nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1312. **Amend the Bill to ban the manufacture, marketing, distribution and sale of nicotine pouches**.
Justification: Amani Maria submitted few adult smokers use nicotine pouches, yet use is high among university students who have low smoking rates. It was argued that introducing and marketing nicotine pouches is a deliberate move by the tobacco industry to target youth, adolescents and children and to make the next generation of tobacco users addicted. These groups are especially open to nicotine addiction and to its harmful effects on the developing brain. A ban would also protect children and adolescents, who now have low rates of use, from starting and becoming addicted to these products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1313. **Amend the Bill to ban the manufacture, marketing, sale and distribution of shisha products.**

Justification: Amani Maria noted that shisha is currently banned under Regulations made under the Public Health Act. It was argued that placing the ban in the Tobacco Control Act would allow a higher fine for manufacture, distribution and sale, one high enough to deter offenders, and would further protect young people from shisha use.

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

93) Mr. Leone A. Otwoma submitted as follows:

1314. **Amend the Bill to ban the manufacture, marketing, distribution and sale of nicotine pouches.**

Justification: Mr. Otwoma submitted few adult smokers use nicotine pouches, yet use is high among university students who have low smoking rates. He argued that introducing and marketing nicotine pouches is a deliberate move by the tobacco industry to target youth, adolescents and children and to make the next generation of tobacco users addicted. These groups are especially open to nicotine addiction and to its harmful effects on the developing brain. A ban would also protect children and adolescents, who now have low rates of use, from starting and becoming addicted to these products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1315. **Amend the Bill to ban the manufacture, marketing, sale and distribution of shisha products.**

Justification: Mr. Otwoma noted that shisha is currently banned under Regulations made under the Public Health Act. He argued that placing the ban in the Tobacco Control Act would allow a higher fine for manufacture, distribution and sale, one high enough to deter offenders, and would further protect young people from shisha use.

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1316. **Amend Section 7** on the Tobacco Control Fund to provide for the Fund to be disbursed to counties, other government ministries, departments and agencies with tobacco control roles, research organisations and civil society.

Justification: Mr. Otwoma noted that enforcing tobacco control measures is a devolved function, yet the Ministry of Health is not devolving money from the Fund to support county enforcement programmes. He added that some tasks of the Fund, such as research and public awareness, are delivered better by research organisations and civil society organisations.

Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

1317. **Strengthen the proposed measures that restrict minors' access to tobacco products** by increasing the distance within which marketing is not allowed from 100 metres to 300 metres, and by raising the age below which a person may not access tobacco products from 18 to 21 years.

Justification: Mr. Otwoma submitted this would align tobacco control laws with the proposed alcohol control laws, which also provide for 300 metres and 21 years, and would make enforcement easier. He noted that the adolescent brain keeps developing until the age of 25, so raising the age of access to 21 gives adolescents three more years of protection from nicotine addiction.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

94) The Bars, Hotels and Liquor Traders Association of Kenya (BAHLITA) submitted as follows:

1318. **Clause 14J(1)(f) – Flavour Restrictions: Delete the proposed new** Section 14J(1)(f) on flavour restrictions.

Justification: BAHLITA argued that a total ban on flavours would limit adult consumer choice, push consumers towards illicit markets and undermine efforts to encourage smokers to switch to alternative nicotine products. It proposed targeted restrictions to protect minors instead of a total prohibition.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted the evidence before it from other stakeholders that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J.

1319. **Sections 20A and 21A – Licensing and Registration:** Delete the proposed new Sections 20A and 21A on licensing and registration requirements.
Justification: BAHLITA argued that the proposed dual licensing framework would duplicate existing regulatory requirements, increase compliance costs, complicate enforcement and disadvantage legitimate businesses. It recommended retaining county Unified Business Permits as the primary licensing framework for retailers.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

1320. **Section 15(5A) – 100-Metre Restriction:** Delete the proposed new Section 15(5A) on the 100-metre restriction on the sale of tobacco and nicotine products.
Justification: BAHLITA argued that the restriction would make many existing licensed businesses non-compliant, particularly in densely populated urban areas. It also cited difficulties in measuring the 100-metre radius, the risk of inconsistent enforcement and increased opportunities for illicit trade. It proposed enhanced age verification, clear signage and strict penalties for selling tobacco products to minors as alternatives.
Committee Resolution: The Committee did not adopt the proposal to delete section 15(5A). Distance restrictions complement, and do not replace, controls on sale to minors, and they reduce the visibility of products near children.

95) Oliver Mathenge submitted as follows:

1321. No specific clause deletions or amendments were proposed. The stakeholder's submission focused on the need for evidence-based and risk-proportionate regulation of tobacco and nicotine products. He supported the need for the Bill but called for a forward-looking, evidence-based and risk-proportionate approach. He recommended distinguishing between combustible tobacco and non-combustible nicotine products, incorporating harm-reduction principles, addressing misinformation and providing accurate information on relative product risks. He emphasised that regulation should reflect scientific evidence, technological developments and behavioural realities, while maintaining smoking cessation as the ultimate public-health objective.
Committee Resolution: The Committee noted the submission. The Committee did not adopt a separate risk-based regulatory category. The Bill already provides for pre-market approval and testing of each product (sections 14C–14I), in which the risk of a product is assessed.

96) Amos Kamau submitted as follows:

1322. **Clause 3 –** Definitions: Strengthen definitions of nicotine pouches, ingredients, aerosols, flavouring agents, plain packaging, shisha and smoking to cover emerging nicotine products and prevent loopholes.

Justification: Clear definitions will ensure emerging tobacco and nicotine products are effectively covered by the law.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1323. **Clause 5 –** Tobacco Control Advisory Committee: Remove the business representative and strengthen conflict-of-interest, transparency and disclosure requirements.

Justification: This will protect tobacco-control decisions from industry influence and strengthen accountability.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

1324. **Clause 7 –** Solatium/Compensatory Contribution: Set a statutory minimum contribution of 2 per cent and require annual publication of collections and expenditure.

Justification: This will ensure predictable funding for tobacco-control activities and improve accountability in the use of funds.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

1325. **Section 7 –** Tobacco Control Fund: Expand the Fund's use to research, cessation, rehabilitation, public education, enforcement and support to counties, Government agencies, research institutions and civil society.

Justification: This will ensure resources support prevention, treatment, research and enforcement comprehensively.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

1326. **Clause 10 –** Taxation: Require tobacco taxes to reach at least 75 per cent of the retail price, with annual adjustments for inflation and income growth, and earmark revenue for tobacco control and treatment.

Justification: Higher taxation would discourage tobacco consumption, particularly among young people, while providing resources for tobacco-control and treatment programmes.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed

through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1327. **Clause 12 –** Electronic Cigarettes/Electronic Nicotine Delivery Systems: Ban non-therapeutic electronic nicotine delivery systems. If retained, impose strict limits on devices, flavours, sales channels and nicotine levels.
Justification: This will reduce nicotine addiction and the attractiveness and accessibility of these products, particularly among young people.
Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1328. **Clause 12** – Nicotine Pouches: Prohibit their manufacture, importation, sale, distribution, advertising, promotion and use. If not banned, regulate them strictly and reduce the nicotine limit.
Justification: Strong restrictions will prevent the emergence of a new nicotine market and protect young people from nicotine dependence.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1329. **Clauses 12–14 –** Product Approval and Flavours: Strengthen pre-market approval, independent testing, public registers, recalls and restrictions on menthol, cooling agents, sweeteners and other youth-attractive features.
Justification: This will ensure products are properly assessed and prevent product designs and flavours from encouraging youth uptake.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. Proposed section 14J is retained and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation.

1330. **Clause 13 –** Youth Protection: Increase the sales and marketing buffer around schools and child-serving institutions from 100 metres to 300 metres and raise the minimum age from 18 to 21 years.

Justification: The measures will provide stronger protection for children and young adults from tobacco exposure and early nicotine initiation.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1331. **Clauses 16, 17 and 19 –** Online Sales and Licensing: Retain the online sales ban and require platforms, payment providers and delivery services to assist enforcement. Establish unified licensing, registration, data sharing and beneficial-ownership disclosure.

Justification: This will prevent illegal sales, improve monitoring and reduce regulatory evasion.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

1332. **Clauses 18–21** – Packaging and Advertising: Retain the 75 per cent health-warning requirement and plain packaging, while extending controls to electronic products and banning digital, influencer, sponsorship and indirect advertising.

Justification: These measures will reduce tobacco promotion and prevent marketing strategies that appeal to young people.

Committee Resolution: The Committee noted the support for the proposed amendment.

1333. **Clauses 22 and 24 –** Smoke-Free Areas: Remove designated smoking areas and provide for 100 per cent smoke-free indoor and enclosed public places, with stronger outdoor protections.

Justification: This will better protect non-smokers from exposure to second-hand tobacco smoke.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1334. **Clause 19 –** Single-Use Plastics: Retain and strengthen the ban on disposable products, including disposable vapes, with producer-responsibility and take-back requirements.

Justification: This will address environmental pollution associated with disposable tobacco and nicotine products.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1335. **New Clause 19/Section 21C –** Shisha: Expressly prohibit the manufacture, importation, sale and distribution of shisha, with stronger penalties.

Justification: The measure will prevent shisha-related tobacco and nicotine use and associated health risks.

Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1336. **Clause 24 –** Designated Smoking Areas: If retained, require both engineering certification and approval by the county public health officer.

Justification: This will ensure designated smoking areas do not expose the wider public to tobacco smoke.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

1337. **Clause 26 –** Regulations: Expand regulation-making powers to cover tracking and tracing, record-keeping, retailer-density controls, public registers, seizure, environmental obligations and safeguards against industry control of regulatory functions.

Justification: These measures will strengthen enforcement, accountability and monitoring of the tobacco industry.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

97) Bunge la Mwananchi submitted as follows:

1338. No specific clause deletions or amendments were proposed. The stakeholder's submission focused on the need for evidence-based and risk-proportionate regulation of tobacco and nicotine products.

Committee Resolution: The Committee noted the submission. The Committee did not adopt a separate risk-based regulatory category. The Bill already provides for pre-market approval and testing of each product (sections 14C–14I), in which the risk of a product is assessed.

98) Samuel Nyapara submitted as follows:

1339. **Clause 3 – Definition of "Nicotine Pouch":** Retain and refine the definition but prohibit the manufacture, importation, sale, distribution, advertising, promotion and use of nicotine pouches.
Justification: To prevent youth uptake and addiction, close regulatory loopholes and avoid normalising a new addictive product.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1340. **Clause 3 –** Definition of "Ingredients": Expand the definition to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use.
Justification: To regulate harmful substances generated during use and prevent manufacturers from exploiting narrow definitions.
Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1341. **Clause 3 –** Definition of "Advertisement": Retain the existing broad definition and include promotion through brand characteristics.
Justification: To prevent indirect and disguised forms of tobacco advertising.
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1342. **Clause 3 –** New Definitions: Introduce clear definitions of aerosol, flavouring agent, plain packaging, principal display area, shisha and shisha smoking.
Justification: To close interpretive gaps and strengthen enforcement.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1343. **Clause 3 –** Definition of "Smoking": Ensure the definition covers all inhaled smoke, aerosol or vapour, whether visible or invisible and whether nicotine-containing or not.
Justification: To prevent products being relabelled as "nicotine-free" or "herbal" to evade smoke-free restrictions.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1344. **Clause 3 –** "Tobacco Product" and "Characterising Flavour": Define nicotine analogues functionally and include cooling agents, sweeteners and similar sensory effects or descriptors.
Justification: To prevent manufacturers from bypassing flavour restrictions through reformulation and alternative product descriptions.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1345. **Clause 5 –** Tobacco Control Advisory Committee: Remove the business representative and require disclosure of interests, transparent meetings, restrictions on industry interactions and enforceable recusals.
Justification: To protect tobacco-control policy from commercial and industry influence.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1346. **Clause 5 –** Committee Membership: Have tobacco-control and civil-society representatives nominated by the Cabinet Secretary for Health.
Justification: To ensure appropriate public-health oversight and reduce potential conflicts of interest.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1347. **Clause 7 – S**olatium/Compensatory Contribution: Set a minimum contribution of 2 per cent of the ex-factory or import value, with power to prescribe a higher rate, and publish annual collections and expenditure.
Justification: To guarantee predictable funding for tobacco control and ensure transparency.
Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

1348. **Section 7 –** Tobacco Control Fund: Expand the Fund to cover research, cessation, rehabilitation, public education, awareness and enforcement.

Justification: To support the full range of tobacco-control activities.

Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

1349. **Section 7 –** Fund Disbursement: Provide regulations for disbursement to Government agencies, research institutions, counties and Kenyan civil-society organisations involved in tobacco control.

Justification: To establish a clear, accountable framework for using the Fund.

Committee Resolution: The Committee adopted the proposal. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

1350. **Clause 10 –** Tax and Price Policies: Require tobacco taxes to reach at least 75 per cent of retail price, with annual adjustment for inflation and income growth, and earmark revenue for tobacco control, cessation and treatment.

Justification: To reduce tobacco consumption, prevent products from becoming more affordable and fund health interventions.

Committee Resolution: The Committee did not adopt the proposal to prescribe in the Act a minimum tax of 75% of the retail price as excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be addressed through the relevant tax laws. The Committee further resolved to retain Clause 10 of the Bill which requires periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1351. **Clause 12 –** Electronic Cigarettes/ENDS: Prohibit non-therapeutic electronic nicotine delivery systems or, alternatively, allow only tightly controlled reusable closed systems, tobacco flavour, licensed adult-only sales and nicotine of not more than 10 mg/mL

Justification: To reduce nicotine addiction and protect young people from harmful and attractive products.

Committee Resolution: The Committee did not adopt the proposed prohibition. The Committee resolved to retain the regulated model in proposed section 14A, under which electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and purity and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches. The Committee noted that disposable devices made with single-use plastics are prohibited under proposed section 21B.

1352. **Clause 12 –** Nicotine Pouches: Prohibit non-therapeutic nicotine pouches or, alternatively, ban flavours and displays and limit nicotine content to not more than 4 mg per pouch.
Justification: To prevent youth initiation, addiction and the growth of a new nicotine market.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1353. **Clause 12 –** Product Approval and Testing: Strengthen pre-market approval through independent testing, public-health impact assessments, periodic renewal, public registers and clear recall procedures.
Justification: To ensure products meet safety and regulatory requirements before and after entering the market.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that refusal decisions shall be accompanied by written reasons, that product testing shall be at the cost of the manufacturer or importer, and that the register of approved and banned products shall be publicly accessible. The Committee noted that a right of review of administrative decisions is available under the Fair Administrative Action Act, Cap. 7L.

1354. **Clause 12 –** Additives and Characterising Flavours: Prohibit menthol, cooling agents, sweeteners, concept descriptors and other features that increase attractiveness, palatability or ease of inhalation.
Justification: To prevent products from being designed to attract and retain young users.
Committee Resolution: The Committee adopted the proposal. Proposed section 14J is retained as a youth-protection measure and strengthened by extending it to flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, that increase attractiveness, palatability or ease of inhalation, across tobacco and nicotine products.

1355. **Clause 13 –** Youth Protection: Increase the sales buffer around schools and child-serving facilities from 100 metres to 300 metres and raise the minimum age from 18 to 21 years.
Justification: To reduce children's exposure to tobacco products and prevent early nicotine initiation.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The Committee noted that eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1356. **Clause 16 –** Online Sales: Retain the online sales ban and require platforms, payment providers and delivery services to block unlawful transactions and cooperate with enforcement agencies.

Justification: To make the online prohibition enforceable and prevent sellers from shifting to digital channels.

Committee Resolution: The Committee adopted the proposal in part. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online.

1357. **Clauses 17 and 19 –** Licensing and Registration: Introduce a unified digital licensing system, data sharing, annual renewal, beneficial-ownership disclosure, retailer-density controls and publication of licence suspensions and revocations.

Justification: To improve supply-chain monitoring, prevent regulatory evasion and strengthen enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

1358. **Clauses 18 and 23 –** Packaging and Health Warnings: Retain the 75 per cent health warnings and plain packaging, extend them to electronic cigarettes and nicotine pouches, and prohibit branded retail displays.

Justification: To reduce product appeal and prevent packaging and displays from functioning as advertising.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to retain the 75% front-and-back health warning and the plain-packaging power in Clause 18, and the point-of-sale warnings in Clause 23, and apply to electronic nicotine delivery systems as provided in the Bill. The Committee further noted that requirements on health warnings including quitline messages and poison warnings shall be provided in regulations as proposed in the new clause 53(1A)(g).

1359. **Clauses 20 and 21 –** Digital and Indirect Advertising: Impose a comprehensive ban covering digital advertising, influencers, sponsorships, corporate social responsibility, discounts, giveaways, brand stretching and point-of-sale visibility.

Justification: To prevent tobacco promotion from shifting to indirect and emerging marketing channels.

Committee Resolution: The Committee adopted the proposal in part. Clauses 20 and 21 are retained. The Committee noted that the Act already prohibits advertising, promotion and sponsorship.

1360. **Clauses 22 and 24 –** Smoke-Free Areas: Remove designated smoking areas and provide for 100 per cent smoke-free and vape-free indoor and enclosed public places, with stronger outdoor protections.

Justification: To protect the public from second-hand smoke and harmful aerosol exposure.

Committee Resolution: The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict

engineering and ventilation standards. The Committee resolved, however, that no designated smoking area shall be permitted on aircraft.

1361. **Clause 19 –** Single-Use Plastics and Disposable Products: Ban disposable vapes and strengthen producer-responsibility, take-back, seizure and destruction requirements.
Justification: To address plastic, battery and nicotine waste and strengthen environmental enforcement.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1362. **New Clause 19/Section 21C –** Shisha: Prohibit the manufacture, importation, sale and distribution of shisha products, with stronger penalties.
Justification: To prevent shisha use and its associated health risks.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1363. **Clause 24 –** Designated Smoking Areas: If designated smoking areas are retained, require certification by a qualified engineer and approval by the county public health officer.
Justification: To ensure that such areas do not expose the wider public to tobacco smoke.
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that county planning and development is a function of county governments under Part 2 of the Fourth Schedule to the Constitution.

1364. **Clause 26 –** Regulation-Making Powers: Expand the regulations to cover tracking and tracing, due diligence, record-keeping, retailer-density controls, public registers, seizure and destruction, environmental obligations and safeguards against tobacco-industry control.
Justification: To make the Bill's enforcement framework stronger, transparent and resistant to industry influence.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to expand the regulation-making power of the Cabinet Secretary under section 53 of the Act.

99) TINADA Youth submitted as follows:

1365. TINADA Youth submitted proposals broadly similar to those of Samuel Nyapara, covering definitions, the Tobacco Control Advisory Committee, tobacco-control funding, taxation, electronic cigarettes, nicotine pouches, product approval, youth protection, online sales,

licensing, packaging, advertising, smoke-free areas, disposable products, shisha and regulation-making powers.

Committee Resolution: The Committee's resolutions on the corresponding proposals by Samuel Nyapara above apply to the similar proposals by TINADA Youth.

100) The Elementaita Small Traders Association submitted as follows:

1366. The association did not propose specific clause deletions or amendments. It opposed the Bill in its entirety.

Committee Resolution: The Committee noted the opposition for the proposed amendment Bill. The Committee observed that the Bill is necessary to provide for the regulation of novel nicotine products, which are not currently regulated, and to resolve the regulatory gaps that have affected the effective regulation of tobacco and nicotine products

101) The Kenya Scouts Association submitted as follows:

1367. The Kenya Scouts Association supported all nine (9) clauses of the Tobacco Control (Amendment) Bill, 2024, stating that they strengthen the Tobacco Control Act, 2007 and address emerging tobacco and nicotine products.

Committee Resolution: The Committee noted the support for the proposed amendment.

102) The Institute of Certified Public Accountants of Kenya (ICPAK) submitted as follows:

1368. **Clause 14C – Approval of Tobacco Products:** Require technical evaluation and certification by the Kenya Bureau of Standards or another designated technical authority before approval by the Cabinet Secretary.

Justification: Product approval requires independent scientific testing and technical expertise.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

1369. **Clause 5A(1) –** Composition of the Tobacco Control Advisory Committee: Include an accountancy professional with expertise in public finance, financial management or regulatory governance.

Justification: Tobacco control has significant fiscal implications, including taxation, enforcement costs and resource allocation.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

1370. **Clause 6 –** Functions of the Tobacco Control Advisory Committee: Require coordination among the Ministry of Health, National Treasury, county governments, Kenya Revenue

Authority, Kenya Bureau of Standards, Anti-Counterfeit Authority, Directorate of Criminal Investigations and relevant professional bodies.

Justification: Coordinated action is necessary to address taxation, enforcement, standards and illicit tobacco trade.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

103) Mrs. Eva Kinyanjui of Tobacco Harm Reduction Caucus submitted as follows:

1371. Retail and hospitality stakeholders oppose proposed amendments to ban characterising flavours and introduce retail handling licenses, citing severe economic and public health drawbacks.

i. Flavoured alternatives aid harm reduction by helping adult smokers transition away from cigarettes; banning them restricts choice and risks driving consumers toward illicit, unsafe markets.

ii. Mandatory handling licenses impose heavy financial and administrative burdens on SMEs, duplicate existing regulations, restrict market entry, and risk job losses.

iii. Retain regulated access to flavoured products for adults, enforce age controls, drop new licensing rules in favour of existing law enforcement, and consult stakeholders on harm reduction policy.

Committee Resolution: The Committee did not adopt the proposals. The Committee noted that appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and resolved to retain section 14J. The Committee noted that trade licensing and public health regulation are county functions under the Fourth Schedule to the Constitution. The Committee did not adopt mutual recognition of licences across counties. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

104) Mr. Tonny Blair Omondi, from Homa Bay County, submitted as follows:

He stated that he is a tobacco control champion and science educator from Homa Bay County and proposed that;

1372. Introduce a mandatory Extended Producer Responsibility (EPR) framework requiring all tobacco and nicotine product manufacturers, importers, and distributors to finance and manage the collection, recycling, and safe disposal of post-consumer tobacco waste, including cigarette filters, packaging, and e-cigarette components.

Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B is retained. The Committee resolved that its implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste, and that non-compliant stock may be seized and destroyed under the enforcement provisions.

1373. Require all tobacco and nicotine product packaging to be fully recyclable, biodegradable, or reusable, and prohibit the use of single-use plastics and non-recyclable composite materials in product design and distribution.
Committee Resolution: The Committee adopted the proposal in part. Proposed section 21B, which prohibits single-use plastics, is retained. The Committee resolved that implementation shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024.

1374. Allocate a defined percentage of the Tobacco Control Fund to support evidence-based rehabilitation services and targeted awareness programs in universities and tertiary institutions, focusing on prevention of e-cigarette and nicotine pouch use among youth.
Committee Resolution: The Committee did not adopt the proposal. Section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

1375. A ban on manufacture, marketing, distribution and sale of nicotine pouches; given their relatively low prevalence among adult smokers, but high prevalence among university students with low smoking rates, the introduction and marketing of nicotine pouches is a deliberate move by the tobacco industry to target youth, adolescents and children and addict the next generation of tobacco product users. These groups are particularly vulnerable to nicotine addiction and its harmful effects on the still developing brain. Banning nicotine pouches would also protect children and adolescents who currently have low rates of use from introduction and eventual addiction to these products.
Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1376. A ban on manufacture, marketing, sale and distribution of shisha products; this is currently provided for under Regulations under the Public Health Act. Including it in the Tobacco Control Act allows imposition of a higher fine for manufacture, distribution and sell that is sufficiently deterrent, and will further protect young people from shisha use.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1377. Amendments to Section 7 on the Tobacco Control Fund to provide for disbursement of this Fund to counties, other government Ministries, Departments and Agencies with tobacco control roles, research organizations and to civil society; enforcement of tobacco control

measures is a devolved function yet the Ministry of Health is not devolving funds from the Tobacco Control Fund to support county enforcement programs. Further, certain mandates of the Tobacco Control Fund such as research, creation of public awareness are more effectively delivered by research organizations and civil society organizations.

Committee Resolution: The Committee adopted the proposal in part. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

1378. Strengthen proposed measures to restrict minors access to tobacco products by increasing the distance within which marketing is not allowed from 100 to 300 metres, and increase the age to which minors may not access tobacco products from 18 to 21. This will bring the tobacco control laws into consonance with proposed alcohol control laws that also provide for 300 meters and 21 years of age and ease enforcement. It is acknowledged that the adolescent brain continues developing until the age of 25 and increasing the age of access to 21 provides a further 3 years of protection for adolescents from the harms of nicotine addiction.

Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years. The Committee did not adopt the proposal to increase the age of eighteen years, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

105) Mr. Onyango George, a pharmacy student at Kenyatta University submitted as follows:

1379. A ban on manufacture, marketing, distribution and sale of nicotine pouches given their relatively low prevalence among adult smokers, but high prevalence among university students with low smoking rates, the introduction and marketing of nicotine pouches is a deliberate move by the tobacco industry to target youth, adolescents and children and addict the next generation of tobacco product users. These groups are particularly vulnerable to nicotine addiction and its harmful effects on the still-developing brain. Banning nicotine pouches would also protect children and adolescents who currently have low rates of use from introduction and eventual addiction to these products. He stated that ward rounds had shown him the harm tobacco causes, especially to patients with chronic obstructive pulmonary disease. Community blood pressure screening with Stowelink Foundation had also shown him a clear link between tobacco use and high blood pressure in young people and adults.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete

ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1380. A ban on manufacture, marketing, sale and distribution of shisha products; this is currently provided for under Regulations under the Public Health Act. Including it in the Tobacco Control Act allows imposition of a higher fine for manufacture, distribution and sale that is sufficiently deterrent, and will further protect young people from shisha use.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1381. Amendments to Section 7 on the Tobacco Control Fund to provide for disbursement of this Fund to counties, other government Ministries, Departments and Agencies with tobacco control roles, research organizations and to civil society; enforcement of tobacco control measures is a devolved function yet the Ministry of Health is not devolving funds from the Tobacco Control Fund to support county enforcement programs. Further, certain mandates of the Tobacco Control Fund such as research and creation of public awareness are more effectively delivered by research organizations and civil society organizations.
Committee Resolution: The Committee adopted the proposal in part. The Cabinet Secretary shall make regulations under section 53 prescribing the criteria, application and vetting procedures, accountability, audit and reporting requirements for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

1382. Strengthen proposed measures to restrict minors' access to tobacco products by increasing the distance within which marketing is not allowed from 100 to 300 metres, and increase the age to which minors may not access tobacco products from 18 to 21. This will bring the tobacco control laws into consonance with proposed alcohol control laws that also provide for 300 metres and 21 years of age and ease enforcement. It is acknowledged that the adolescent brain continues developing until the age of 25 and increasing the age of access to 21 provides a further 3 years of protection for adolescents from the harms of nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years. The Committee did not adopt the proposal to increase the age of eighteen years, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

106) **Amos Kamau submitted as follows**

1383. He supported the Bill as an important measure for protecting Kenyans from tobacco and nicotine-related harm. He supported measures on taxation, online sales and marketing, health warnings, plain packaging, licensing, product approval, testing, youth protection, county participation and environmental protection. He recommended stronger measures, including banning nicotine pouches and shisha, raising the minimum age to 21 years, extending the protection zone to 300 metres, strengthening regulation of electronic cigarettes, removing designated smoking areas and ensuring adequate funding for tobacco control.

1384. **Committee Resolution:** The Committee noted the support for the proposed amendments.
The Committee adopted the proposal to ban shisha and nicotine pouches while regulating other nicotine products, noting that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.
The Committee did not adopt the proposal to raise the minimum age to twenty-one years, as eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141.
The Committee did not adopt the proposal to increase the distance to 300 metres, as this would operate as a prohibition on lawful retail in large parts of towns and cities.
The Committee did not adopt the proposal to delete designated smoking areas entirely, noting that the Bill already confines them to areas meeting strict engineering and ventilation standards, but resolved that no designated smoking area shall be permitted on aircraft.
On funding, the Committee noted that section 7(4) of the Act already provides that the Fund shall be used for meeting the capital and current expenditure relating to research, documentation and dissemination of information on tobacco and tobacco products and promoting national cessation and rehabilitation programmes.

107) **The Kenya Scouts Association submitted as follows:**

1385. The Association supported the passage of the Bill without delay to strengthen public-health protection and reduce tobacco and nicotine use, particularly among young people. It recommended public awareness and education programmes targeting youth in schools and communities and greater involvement of youth and community-based organisations in implementation.
Committee Resolution: The Committee noted the support for the proposed amendment.

108) **Jackline Mbone Juma, a Public Health Officer from Kakamega,** submitted as follows;

1386. A total ban on tobacco and emerging nicotine products, as these products are killing the future of young people.
Committee Resolution: The Committee did not adopt the proposal. The Committee observed that a complete ban of the novel nicotine products is not desirable as it would lead to increase in illicit trade in nicotine products and nicotine pouches. The Committee resolved to retain a regulation model where electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and to child-proofing and leakage requirements, in

addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches.

109) Edwinson Barasa Makunda submitted that;

1387. A ban on the manufacture, marketing, distribution and sale of nicotine pouches – given their relatively low prevalence among adult smokers, but high prevalence among university students with low smoking rates, the introduction and marketing of nicotine pouches is a deliberate move by the tobacco industry to target youth, adolescents and children and addict the next generation of tobacco product users. These groups are particularly vulnerable to nicotine addiction and its harmful effects on the still-developing brain. Banning nicotine pouches would also protect children and adolescents who currently have low rates of use from introduction and eventual addiction to these products.

1388. A ban on manufacture, marketing, sale and distribution of shisha products – this is currently provided for under Regulations under the Public Health Act. Including it in the Tobacco Control Act allows imposition of a higher fine for manufacture, distribution and sale that is sufficiently deterrent, and will further protect young people from shisha use.

1389. Amendments to Section 7 on the Tobacco Control Fund to provide for disbursement of this Fund to counties, other government Ministries, Departments and Agencies with tobacco control roles, research organisations and to civil society – enforcement of tobacco control measures is a devolved function, yet the Ministry of Health is not devolving funds from the Tobacco Control Fund to support county enforcement programmes. Further, certain mandates of the Tobacco Control Fund, such as research and creation of public awareness, are more effectively delivered by research organisations and civil society organisations.

1390. Strengthen proposed measures to restrict minors' access to tobacco products by increasing the distance within which marketing is not allowed from 100 to 300 metres, and increase the age at which minors may not access tobacco products from 18 to 21. This will bring the tobacco control laws into consonance with proposed alcohol control laws that also provide for 300 metres and 21 years of age and ease enforcement. It is acknowledged that the adolescent brain continues developing until the age of 25 and increasing the age of access to 21 provides a further 3 years of protection for adolescents from the harms of nicotine addiction.

Committee Resolution: The Committee adopted the proposal in part. The Committee adopted the proposal on prohibition of nicotine pouches while regulating nicotine products as a complete ban of novel nicotine products may lead to an increase in illicit trade. The Committee adopted the proposal on shisha and resolved that a prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act. The Committee resolved that the Cabinet Secretary shall make regulations prescribing the criteria and procedures for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to increase the distance to 300 metres, as this would operate as a prohibition on lawful retail in large parts of towns and cities.

110) Honest Kawa submitted that;

1391. Honest Kawa supported the Tobacco Control (Amendment) Bill, Senate Bill No. 35 of 2024, for the following reasons.

(i) It introduces provisions to regulate the sale and distribution of e-cigarettes including a ban on flavours, online marketing and delivery, and health warnings on their dangers.

(ii) It strengthens provisions on taxation of tobacco products to ensure tobacco tax policies effectively meet government health and revenue goals.

(iii) It extends protections to prevent minors accessing tobacco products by introducing distances within which tobacco advertising and marketing should not take place near institutions of basic education, bans online marketing and delivery of tobacco and nicotine products since age verification is not possible through such means, and bans manufacture or sale of tobacco products resembling toys, sweets or any other items that would reasonably appeal to children.

(iv) It improves government regulation of the tobacco industry by introducing requirements for registration and licensing, approval of products onto the Kenyan market and testing of products.

(v) It takes into account devolution and the role of Counties in developing and implementing public health and tobacco control policies by giving them a seat in the Tobacco Control Advisory Committee and a role in policy making and licensing.

(vi) It strengthens education of the public and of tobacco users on the health harms of tobacco and nicotine products by increasing the size of the health warnings from the current 40% to 75% and the introduction of standardized or plain packaging for tobacco products.

(vii) It protects the environment by prohibiting use of single use plastics in tobacco products.

Justification: He has grown up seeing many youths in Migori get wasted due to tobacco. Some drop out to work in the tobacco fields, eventually getting addicted, while others fall to peer pressure.

Committee Resolution: The Committee noted the support. The Committee resolved to ban nicotine pouches and shisha while regulating other nicotine products, and to retain the regulated model under which electronic nicotine delivery systems are subject to pre-market approval, testing, flavour restrictions and the ban on online sales. The Committee further resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill. The seat for counties on the Board, through the Council of Governors, and the role of counties in licensing are retained. The 75% front-and-back health warning, the plain-packaging power in Clause 18 and the prohibition on single-use plastics in proposed section 21B are retained.

1392. **On the Tobacco Control Fund:** The Committee's attention is drawn to the following proposed amendments to the Tobacco Control Fund, which will significantly strengthen implementation, sustainability and civil society engagement.

(i) **Solatium (compensatory) contribution**. A statutory floor of not less than 2% of the ex-factory or import value of all tobacco and nicotine products, collected into the Tobacco Control Fund, with annual public reporting of collections and use.

(ii) **Expanded Fund purposes**. Expressly include public education, awareness creation, advocacy, and treatment of chronic illnesses caused by tobacco use (cancers, cardiovascular and respiratory diseases) as allowable expenditures.

(iii) **Minimum 15% allocation to civil society**. Not less than fifteen percent (15%) of annual disbursements from the Fund shall be allocated to Kenyan civil society organizations and non-governmental organizations for community-based tobacco control programs, public education, and advocacy.

(iv) **Regulations for transparent disbursement**. The Cabinet Secretary shall be required to prescribe clear criteria, application, vetting, and disbursement procedures for CSOs, ensuring geographic equity and accountability.

Justification: These amendments will create a predictable, industry-funded resource for tobacco control at national and county levels, while ensuring that civil society, which plays a critical role in awareness, monitoring and community mobilization, is not left unfunded.

Committee Resolution: The Committee adopted the proposal in part. The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. Section 7(4) of the Act already provides that the Fund shall be used for research, documentation and dissemination of information and for promoting national cessation and rehabilitation programmes, and the Bill further proposes treatment of chronic illnesses caused by the use of tobacco products. The Committee did not adopt the proposal to allocate a share of the Fund to civil society organisations, as this introduces a parallel funding structure contrary to the Public Finance Management Act, Cap. 412A. The Committee resolved that the Cabinet Secretary shall make regulations prescribing the criteria and procedures for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A.

1393. **On nicotine pouches**.: A ban on manufacture, marketing, distribution and sale of nicotine pouches.

Justification: Given their relatively low prevalence among adult smokers, but high prevalence among university students with low smoking rates, the introduction and marketing of nicotine pouches is a deliberate move by the tobacco industry to target youth, adolescents and children and addict the next generation of tobacco product users. These groups are particularly vulnerable to nicotine addiction and its harmful effects on the still developing brain. Banning nicotine pouches would also protect children and adolescents who currently have low rates of use from introduction and eventual addiction to these products.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of

novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1394. **On shisha products.** A ban on manufacture, marketing, sale and distribution of shisha products.
Justification: This is currently provided for under Regulations under the Public Health Act. Including it in the Tobacco Control Act allows imposition of a higher fine for manufacture, distribution and sale that is sufficiently deterrent, and will further protect young people from shisha use.
Committee Resolution: The Committee adopted the proposal. Shisha is currently regulated only through regulations under the Public Health Act, which carry low penalties. A prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act, with a penalty aligned to the offence and penalty provisions of the Act.

1395. **On access by minors:** Strengthen proposed measures to restrict minors access to tobacco products by increasing the distance within which marketing is not allowed from 100 to 300 meters, and increase the age to which minors may not access tobacco products from 18 to 21.
Justification: This will bring the tobacco control laws into consonance with proposed alcohol control laws that also provide for 300 meters and 21 years of age and ease enforcement. It is acknowledged that the adolescent brain continues developing until the age of 25 and increasing the age of access to 21 provides a further 3 years of protection for adolescents from the harms of nicotine addiction.
Committee Resolution: The Committee did not adopt the proposal to increase the distance to 300 metres. The Committee noted that, in dense urban areas, 300 metres would operate as a prohibition on lawful retail in large parts of towns and cities. The 100-metre restriction in proposed section 15(5A) is retained, with clarity on the description of premises primarily serving persons under eighteen years. The Committee did not adopt the proposal to increase the age of eighteen years, as it is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141, and raising it to twenty-one for tobacco products alone would depart from the majority age used across the law.

1396. **On the title**: The Bill title refers to electronic nicotine delivery systems, including electronic cigarettes and related products. Amend the title to read "AN ACT of Parliament to amend the Tobacco Control Act to regulate electronic nicotine delivery systems, including electronic cigarettes, nicotine pouches and related products, and for connected purposes."
Justification: Brings the title into line with the substances and products expressly dealt with in the Bill.
Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1397. **Amend Clauses 3, 12, 16 and 23**; on nicotine pouches. The Bill defines nicotine pouches and then regulates them as lawful products, including by prescribing product standards and retail warning requirements. Retain and refine the definition of "nicotine pouch" in section 2 (Clause 3) for enforcement clarity, but delete proposed section 14B (Clause 12) in its current form and replace it with an express prohibition reading "No person shall manufacture, import, sell, distribute, advertise, promote or use a nicotine pouch." Further, delete all consequential references that presuppose lawful sale or display of nicotine pouches, including in online sales and retail warning provisions (Clauses 16 and 23 and any other clause that regulates, permits or assumes lawful sale of nicotine pouches), save only where reference is necessary for seizure, enforcement or offence provisions.

Justification: A prohibition model is preferable because nicotine pouches are discreet oral nicotine products that are easy to conceal, easy to use in smoke-free spaces, and often marketed in flavours and formats that increase youth appeal and addiction risk. WHO has identified nicotine pouches as emerging nicotine products that create serious regulatory challenges and are often promoted as "tobacco-free," which may mislead consumers about risk. WHO has also called for urgent action to ban flavours in tobacco and nicotine products, expressly including pouches, because flavours drive uptake and entrench dependence, especially among children and young people. Retaining a clear definition while prohibiting the product closes loopholes, supports seizure and prosecution, and prevents the law from normalising a new addictive consumer product.

Committee Resolution: The Committee adopted the proposal. The Committee resolved to ban nicotine pouches while regulating other nicotine products and noted that a complete ban of novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products.

1398. **Amend Clause 3**; on the definition of "ingredients". The Bill expands "ingredients" to cover substances added during manufacture or arising from agricultural practices, including substances used in aerosol or vapour creation and materials migrating from packaging. Retain the expanded definition, but expressly add "constituents, emissions, contaminants and by-products generated during heating, aerosolization, storage or use", and require disclosure of device-component emissions.

Justification: This should be widened beyond ingredients physically present in the product at the point of sale. For novel nicotine products, major risks arise from what is generated during heating and aerosolisation, including emissions from coils, wicks, batteries, solvents and flavour additives. A narrow definition lets industry argue that only the bottled liquid or pouch contents matter, even where the actual inhaled aerosol contains additional toxicants. The better approach is to regulate both product contents and product disclosures, including emissions and contaminants released in normal use. That aligns the Bill with modern product-regulation practice and makes later standards on testing, approvals and recalls legally safer.

Committee Resolution: The Committee adopted the proposal. The definition of "ingredients" shall be amended to include constituents, emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations capture what the user is actually exposed to.

1399. **Amend Clause 3**; on the definition of "advertisement". The Bill introduces a shorter new definition of advertisement. Reject the replacement definition. Retain the existing broad definition and add a new limb, "promotion of a tobacco product by means of its brand characteristics."
Committee Resolution: The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC, and The Committee adopted the proposal. The existing broad definition of "advertisement" in the Act shall be retained, in line with Article 13 of the WHO FCTC.

1400. **Insert new definitions in Clause 3**; on new definitions. Insert new definitions for "aerosol", "flavouring agent", "plain packaging", "principal display area", "shisha", and "shisha smoking".

(i) "aerosol" means the emission which is discharged from an electronic cigarette when the volatile electronic liquid in a chamber comes into contact with a heated electric coil or any other source of heat;

(ii) "flavouring agent" means any ingredient or additive other than tobacco, that is added to a tobacco product regardless of its source and (a) delivered as an accessory to, or as a component of a tobacco product; (b) enhances the use of a tobacco product; or (c) facilitates the appeal and addiction to a tobacco product;

(iii) "plain packaging" means measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standardized colour and font style;

(iv) "principal display area" means the surfaces of any tobacco product package that may be displayed or visible under normal conditions of sale and, in the case of (a) box type packages, two equal sized largest surface areas of the box that may be displayed or visible under normal conditions of sale or use; (b) pouch type packages, the entire surface area of the pack that may be displayed or visible under the normal conditions of sale or use; (c) conical or cylindrical type of packages, the entire curved area of the pack that may be displayed or visible under normal conditions of sale or use; or (d) any other form or type of package, the entire surface area of the pack that may be displayed or visible under normal conditions of sale or use;

(v) "shisha" includes tobacco products that may be flavoured or non flavoured that are consumed using a single or multi-stemmed smoking instrument that contains water or other liquid through which the

smoke passes before reaching the smoker and whose syrup tobacco content includes molasses, honey, vegetable glycerol and fruit flavours including apple, grape, guava, lemon and mint; and

(vi) "shisha smoking" means a form of consumption of shisha that utilizes a single or multi-stemmed smoking instrument to smoke shisha where the smoke is designed to pass through water or other liquid before reaching the smoker.

Justification: Intended to close interpretive gaps and support enforcement.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to insert definitions of "aerosol", "flavouring agent", "plain packaging" and "principal display area" to give effect to section 14J and Clauses 18 and 23.

1401. **Amend Clause 3**; on the definition of "smoking". The Bill revises "smoking" to include inhaling or exhaling smoke or vapour delivered through electronic means. Retain, but make explicit that the definition covers any inhaled aerosol or vapour, whether nicotine-containing or not, and whether visible or invisible.

Justification: The definition should close the common loophole under which sellers market products as nicotine-free or "herbal" and then argue that smoke-free protections do not apply. WHO states that ENDS emissions contain nicotine and other toxic substances harmful to users and non-users, and that some products marketed as nicotine-free have been found to contain nicotine. A technology-neutral definition prevents easy product relabelling, future-proofs the Act against new devices, and supports enforcement in schools, transport, workplaces and hospitality venues.

Committee Resolution: The Committee adopted the proposal. The definition of "smoking" shall be technology-neutral and cover any inhaled or exhaled aerosol or vapour, whether or not it contains nicotine, to prevent evasion of smoke-free requirements through product relabelling.

1402. **Amend Clause 3**; on the definitions of "tobacco product" and "characterising flavour". The Bill brings synthetic nicotine formulations and nicotine analogues into the definition of tobacco product and introduces a definition of characterising flavour. Retain and strengthen by defining nicotine analogues functionally, and by extending "characterising flavour" to include cooling agents, sweetness enhancers, sensory effects and concept descriptors such as "ice", "fresh", "cool", "chill", "smooth" or similar.

Justification: Industry practice now includes chemical reformulation, branding tricks and non-traditional descriptors intended to preserve youth appeal while formally avoiding a named flavour. A narrow flavour definition can be bypassed through synthetic nicotine variants, cooling additives and "concept flavours" that deliver the same sensory effect without expressly stating fruit or candy. WHO and the FCTC Secretariat have recently called for bans on ingredients that increase attractiveness and palatability. A functional definition reduces evasive product design and supports enforcement against lookalike reformulations.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved that the inclusion of synthetic nicotine and nicotine analogues in the definition of "tobacco product" is retained. The definition of "characterising flavour" shall be extended to cover cooling agents, sweetness enhancers and descriptors that convey a flavour or sensory effect, so that the prohibition in section 14J cannot be defeated by reformulation.

1403. **Delete proposed section 5A(1)(g) in Clause 5**; on the Tobacco Control Advisory Committee. The Bill replaces the Board with the Tobacco Control Advisory Committee and in the new section 5A(1)(g) includes a Kenya National Chamber of Commerce and Industry nominee while adding conflict-of-interest disqualifications. Delete section 5A(1)(g) entirely. Also amend section 5A(2) to clarify that remaining members are appointed by the Cabinet Secretary.
Justification: The business seat is a structural weakness. Tobacco control is not an ordinary sectoral-regulation field because the tobacco industry has a direct commercial interest in weakening demand-reduction measures. Article 5.3 requires protection of public health policies from the commercial and other vested interests of the tobacco industry. The current conflict-of-interest wording is useful but insufficient if the Committee still institutionalizes an industry-adjacent nomination route. The safer model is to remove the seat altogether and legislate transparency, limited interactions and enforceable recusals. The Supreme Court has already upheld strong tobacco-control regulations, including limits on interactions between public authorities and the tobacco industry.
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill, and the safeguards against conflict of interest provided under the proposed section 5B.

1404. **Amend Clause 5**; on the nominee of the Council of Governors. The Bill provides for one person with expertise on matters relating to tobacco nominated by the Council of Governors. Amend to read "one person with special expertise on matters relating to tobacco control, nominated by the Cabinet Secretary for Health."
Committee Resolution: The Committee did not adopt the proposal. The nomination of the expert member by the Council of Governors is retained, as it gives effect to the role of counties in public health and tobacco control under the Fourth Schedule to the Constitution and to the principle of consultation and cooperation between the two levels of government.

1405. **Amend Clause 5**; on the representative of non-governmental organizations. The Bill provides for one person representing NGOs involved in tobacco control. Amend to require nomination by the Cabinet Secretary for Health.
Committee Resolution: The Committee did not adopt the proposal. The nomination of the representative of non-governmental organisations remains as provided in the Bill. The Committee noted the need for a transparent and competitive selection process.

1406. **Amend Clause 7**; on the solatium (compensatory) contribution. The Bill leaves the amount of the compensatory contribution to be determined by the Committee. Insert a statutory floor of not less than 2% of the ex-factory value or import value of tobacco and nicotine products, with power to prescribe a higher rate by regulation. Require annual publication of collections and use of the Fund.

Justification: Leaving the contribution entirely open-ended makes the Fund vulnerable to under-financing. Kenya already has a workable 2% benchmark in the regulatory history, and the Supreme Court upheld the constitutionality of the broader tobacco-control framework and rejected the claim that the solatium mechanism was unconstitutional as such.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

111) Child Space Organisation submitted that

1407. The Bill closes gaps that allow early exposure of children to tobacco, which its community programmes link to lifelong addiction and poor health and education outcomes, supports national efforts against drug and substance abuse, since tobacco often serves as a gateway to other drugs, reduces exposure to second-hand smoke in homes and public spaces where children are most vulnerable, and reinforces Kenya's commitment to the rights of the child, including the right to the highest attainable standard of health. The Nyandarua Cancer Support Group supported the Bill as a measure against tobacco-related cancer.

Committee Resolution: The Committee noted the support for the proposed amendment.

112) Ngala Marie Goretti submitted general recommendations as follows:

1408. **Interpretation (Definitions): Insert definitions for:**

1) **"combustible tobacco product"** means any tobacco product that is consumed through combustion, including cigarettes, cigars, cigarillos, pipe tobacco, or any other product that involves the burning of tobacco and inhalation of smoke, whether manufactured, rolled, or otherwise prepared for human consumption.

   Committee resolution: The Committee did not adopt the proposal. The proposed Act regulates nicotine products without distinguishing combustible from non-combustible as the risk of addiction exists in both products.

2) **"non-combustible nicotine product"** means any product containing nicotine that does not involve combustion in its use, including but not limited to oral, vapour-based, dissolvable, or alternative delivery formats intended to deliver nicotine without burning.

   The Committee did not adopt the proposal. The proposed Act regulates nicotine products without distinguishing combustible from non-combustible as the risk of addiction exists in both products.

3) **"electronic nicotine delivery system" (ENDS) means** a product, whether or not containing nicotine, that is designed to deliver an inhaled aerosol to the user by heating a liquid, gel, or other substance, and includes electronic cigarettes, vapourisers, pods, tanks, cartridges, and any component or refill associated with such systems.
Committee resolution: The Committee did not adopt the proposal. The Committee noted that the definition proposed in the Bill is broader, while the one proposed covers only products that heat a liquid, gel or other substance.

4) **"nicotine pouch product"** means a pre-portioned, tobacco-free oral product containing nicotine, intended for placement in the mouth for absorption through the oral mucosa, and which does not involve combustion, inhalation, or vapourisation.
Committee resolution: The Committee did not adopt the proposal. The Committee noted that indicating that a product is "tobacco-free" may mislead consumers about its risks.

5) **"risk continuum"** means the spectrum of relative health risk associated with tobacco and nicotine products, arranged in order from highest to lowest risk based on scientific evidence, with combustible tobacco products representing the highest risk category and non-combustible nicotine products, including electronic nicotine delivery systems and nicotine pouch products, representing comparatively lower-risk categories, without implying that any such product is risk-free." Risk Continuum Principle (NEW): Insert: "Regulatory measures under this Act shall be proportionate to the relative risk of products as determined by scientific evidence and public health assessment."
Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the WHO FCTC does not provide for a statutory risk continuum.

1409. **Tobacco Advisory Committee Composition: Insert:** "Membership shall include representatives from government, public health, private sector operators, and consumer organisations with demonstrable national representation." Advisory Committee Function: Expand mandate: "The Committee shall review regulatory impact assessments and implementation feasibility before issuance of regulations."
Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill.

113) Talk to Save Youth CBO submitted general recommendations as follows:

1410. Solatium (compensatory) contribution: A statutory floor of not less than 2% of the ex-factory or import value of all tobacco and nicotine products, collected into the Tobacco Control Fund, with annual public reporting of collections and use.

Expanded Fund purposes: Expressly include public education, awareness creation, advocacy, and treatment of chronic illnesses caused by tobacco use (cancers, cardiovascular and respiratory diseases) as allowable expenditures.

Minimum 15% allocation to civil society: Not less than fifteen per cent (15%) of annual disbursements from the Fund shall be allocated to Kenyan civil society organisations and nongovernmental organisations for community-based tobacco control programs, public education, and advocacy.

Regulations for transparent disbursement: The Cabinet Secretary shall be required to prescribe clear criteria, application, vetting, and disbursement procedures for CSOs, ensuring geographic equity and accountability.

A ban on manufacture, marketing, distribution and sale of nicotine pouches – given their relatively low prevalence among adult smokers, but high prevalence among university students with low smoking rates, the introduction and marketing of nicotine pouches is a deliberate move by the tobacco industry to target youth, adolescents and children and addict the next generation of tobacco product users. These groups are particularly vulnerable to nicotine addiction and its harmful effects on the still-developing brain. Banning nicotine pouches would also protect children and adolescents who currently have low rates of use from introduction and eventual addiction to these products.

A ban on the manufacture, marketing, sale and distribution of shisha products – this is currently provided for under Regulations under the Public Health Act. Including it in the Tobacco Control Act allows imposition of a higher fine for manufacture, distribution and sell that is sufficiently deterrent, and will further protect young people from shisha use.

Strengthen proposed measures to restrict minors' access to tobacco products by increasing the distance within which marketing is not allowed from 100 to 300 Metres, and increase the age to which minors may not access tobacco products from 18 to 21 years. This will bring the tobacco control laws into consonance with proposed alcohol control laws that also provide for 300 metres and 21 years of age and ease enforcement. It is acknowledged that the adolescent brain continues developing until the age of 25 and increasing the age of access to 21 provides a further 3 years of protection for adolescents from the harms of nicotine addiction.

Committee Resolution: The Committee did not adopt the proposal to include a statutory floor of two per cent. The Committee resolved to retain the determination of the contribution by the Tobacco Control Board, but to require that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually. Section 7(4) of the Act already provides that the Fund shall be used for research, documentation and dissemination of information and for promoting national cessation and rehabilitation programmes. The Committee did not adopt the proposal to allocate a share of the Fund to civil society organisations, as this introduces a parallel funding structure contrary to the Public Finance Management Act, Cap. 412A. The Committee adopted the proposal on prohibition of nicotine pouches while regulating the nicotine products as a complete ban of novel nicotine products may lead to an increase in illicit trade. The Committee adopted the proposal on shisha and resolved that a prohibition on the manufacture, sale, distribution and importation of shisha shall be provided for in the Act. The Committee resolved that the Cabinet Secretary shall make regulations prescribing the criteria

and procedures for disbursement of the Fund to eligible recipients in accordance with the Public Finance Management Act, Cap. 412A. The Committee did not adopt the proposal to increase the distance to 300 metres, as this would operate as a prohibition on lawful retail in large parts of towns and cities.

114) SHAPE Organization submitted that;

1411. That SHAPE is a women-led grassroots organisation in Kisumu that runs harm reduction programmes for women and girls who use drugs. The Bill aligns with its mission. The Bill strengthens regulation of nicotine products, protects young people from addiction, limits harmful marketing and creates a healthier environment for prevention and recovery. Elewa Ulevi Consultancy, an out-patient counselling and treatment centre for chemical dependency, behavioural addiction and mental health, reported a growing use of smokeless tobacco among its clients and the wider community. It warned that many people wrongly see chewing tobacco, snuff and nicotine pouches as safer, although their high nicotine content makes them highly addictive. For people in recovery from alcohol or other drugs, smokeless tobacco can act as a substitute addiction. Slum Child Foundation, SHAPE and Elewa Ulevi Consultancy drew particular attention to financing of the Tobacco Control Fund and of civil society.

Committee Resolution: The Committee noted the support for the proposed amendment.

4.4 General Comments on the Bill by Stakeholders

1412. The **Ministry of Health (MOH)** submitted proposals aimed mainly at making the Bill easier to enforce and the solatium compensatory contribution easier to collect. In general, MOH observed that:

1) The Bill should allow tax officers to take part in enforcement, by widening the meaning of "authorised officer" to include an authorised officer as defined under the Tax Procedures Act.
2) The solatium compensatory contribution needs clear rules on when it must be declared and paid, namely within thirty days of publication of audited accounts for declaration, and within thirty days after the end of each quarter for payment.
3) The collection of the contribution needs enforceable consequences, including offences and penalties for late or false declarations, and a clear way to recover amounts that are short-paid or wrongly refunded.
4) There should be a fair process for disputes, with the Cabinet Secretary deciding applications within thirty days and giving reasons, and any aggrieved person able to appeal to the High Court within thirty days.
5) These proposals take into account the views of the Kenya Revenue Authority (KRA).

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that the inspection, entry and seizure powers under section 36 of the Tobacco Control Act relate to public health enforcement, which should remain with officers appointed under that section. The Committee further noted that matters on tax

declaration, payment and offences and penalties for late or false declarations fall outside the scope of this Bill. The Committee further noted that the Fair Administrative Action Act, Cap. 7L allows a person aggrieved by an administrative action or decision to apply to court for review.

1413. The **National Treasury** submitted proposals focused on the cost of running the Tobacco Control Advisory Committee and on good financial management. In general, the National Treasury observed that:

1) The Chairperson's renewed term should be shorter, at three years rather than five.
2) The expenses of the Committee should be limited to not more than 3% of the revenues projected to be received into the Fund in any financial year, and met from money appropriated by the National Assembly for that purpose.
3) The management of the Tobacco Control Fund should follow the Public Finance Management Act, including the rules on the Officer administering the Fund.
4) The Schedule in the principal Act should be restored rather than repealed.

Committee Resolution: The Committee adopted the proposals on the term of the Chairperson and on the expenses of the Board. The Committee did not adopt the proposal on the administration of the Fund and resolved that the Fund shall be administered by the Chief Executive Officer of the Board in accordance with the Tobacco Control Act, the Public Finance Management Act, Cap. 412A, and other applicable laws. The Committee did not adopt the proposal to restore the Schedule, as warning labels will be prescribed by regulations made under section 53.

1414. The **Council of Governors (CoG)** submitted proposals aimed at protecting the role of county governments in the implementation of the Bill. In general, the Council observed that:

1) Counties should be properly represented on the Tobacco Control Advisory Committee, through a County Executive Committee Member responsible for Health nominated by the Council, so that representation continues whatever changes occur in leadership.
2) Functions that are devolved, such as county health services, should be backed by money, in line with Articles 187 and 202 of the Constitution, and the Fund should therefore be able to support counties in prevention, surveillance and treatment of tobacco-related illnesses.
3) The Bill should not create unfunded enforcement duties for counties, and the Cabinet Secretary should work with counties on technical support, laboratory testing, surveillance and enforcement.
4) County licensing and national registration of dealers should work together without duplication, and county governments should keep the freedom to decide which office issues licences, including through a Single Business Permit system.
5) Counties should be involved in enforcing the smoking restrictions and in the inspection and certification of designated smoking areas, while the Director-General for Health acts for the National Government only in national functions.

Committee Resolution: The Committee adopted the proposal in part. The Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill. The Committee resolved that the County Executive Committee Member responsible for Health, nominated by the Council of Governors, or a designated representative, shall sit on the Board. The Committee did not adopt the proposal to expand the purposes of the Fund, as section 7(4) of the Act already provides for the purposes of the Fund. The Committee noted that trade licensing and public health regulation are county functions under the Fourth Schedule to the Constitution. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers.

1415. The **Kenya Bureau of Standards (KEBS)** submitted proposals aimed at making sure that technical requirements in the Bill follow the national standards system. In general, KEBS observed that:

1) Technical requirements such as volume, nicotine concentration, purity and permitted ingredients for electronic nicotine delivery systems are "specifications" which, under the Standards Act, are declared by the National Standards Council as Kenya Standards. Fixing them directly in the Bill bypasses that process and may be difficult to reconcile with Kenya's obligations under the World Trade Organisation Agreement on Technical Barriers to Trade.
2) The Tobacco Control Advisory Committee will recommend standards for e-liquids, batteries and electrical components, yet it has no member with knowledge of industrial or commercial standards. KEBS therefore proposed that it nominate one member.
3) Standards for batteries and electrical components used in these products should be developed by KEBS as Kenya Standards and only referred to in the regulations.
4) KEBS had no objection to Clause 27 on the repeal of the Schedule, which it noted as consequential.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that under section 4(1) of the Standards Act, Cap. 496, the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government whether commodities comply with the standards prescribed under that Act or any other written law and may provide for testing at the request of the Cabinet Secretary.

1416. The **National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA)** submitted proposals that would make the Bill stricter and give stronger protection to children and young people. In general, NACADA observed that:

1) Nicotine pouches should be prohibited rather than regulated as lawful products and, if Parliament retains them, they should be controlled as strictly as other tobacco products. The same applies to non-therapeutic electronic cigarettes and disposable vapes, and shisha should be prohibited.

2) Flavours, cooling agents and other features that make products more attractive and easier to inhale should be covered by the Bill, and the definitions should be widened to prevent products being relabelled to avoid the law.
3) The minimum legal age should be raised from eighteen to twenty-one years, and the distance from schools and places serving children raised from 100 to at least 300 metres.
4) Tobacco taxes should be at least 75% of the retail price, the solatium compensatory contribution should have a statutory floor of 2%, and the Fund's use and disbursement should be set out clearly.
5) Smoke-free places should be fully smoke-free and vape-free, without designated smoking areas.
6) The Tobacco Control Advisory Committee should include the Chief Executive Officer of NACADA, and should be protected from the influence of the tobacco industry.
7) Approval of products, online sales, advertising, warnings and regulation-making powers in the Bill should be strengthened to support enforcement.

Committee Resolution: The Committee did not adopt the proposal, to raise the minimum age to twenty-one years, to increase the distance to 300 metres, to prescribe a minimum tax of 75% of the retail price, to set a statutory floor of two per cent for the solatium contribution and to delete designated smoking areas entirely, but resolved that no designated smoking area shall be permitted on aircraft. The Committee adopted the proposal in part, including the proposals to prohibit nicotine pouches, flavours and design features, product approval, online sales, advertising, warnings and regulation-making powers. On the Tobacco Control Advisory Committee, the Committee resolved to delete the clauses relating to the Tobacco Control Advisory Committee and re-establish the Committee as a Board with the membership proposed in the Bill,

1417. The **Anti-Counterfeit Authority (ACA)** submitted that it supports the Bill as a necessary and timely intervention. In general, ACA observed that:

1) ENDS, e-hookahs, vapes and nicotine pouches are presently outside any approval, traceability or labelling regime, and risk becoming the next route for illicit and counterfeit trade unless they are promptly regulated.
2) The scale of the problem is significant. The ACA National Baseline Survey (2020) estimated that counterfeit and illicit trade was equivalent to approximately 9.3% of GDP, or about KSh 829 billion annually, while the World Health Organization estimates that eliminating illicit trade in tobacco would yield approximately USD 47.4 billion in additional government revenue globally.
3) By regulating the production, importation and sale of ENDS through mandatory approvals, strict labelling and controlled sales channels, the Bill provides a strong framework that supports ACA's mandate to remove counterfeit goods from the Kenyan market, protecting both legitimate intellectual property owners and the health of the public.

4) The approval register, the information required on packets, fixed-location licensing and the technical standards in the Bill give enforcement officers clear and objective ways of telling genuine products from counterfeit ones.
5) With the improvements it has proposed, particularly linking the section 141 approval register to its Anti-Counterfeit Integrated Management System (AIMS) and the KRA Excisable Goods Management System (EGMS), express reference to the WHO FCTC Protocol, a stand-alone counterfeit-tobacco offence and cross-referencing section 34B of the Anti-Counterfeit Act, the Bill will deliver gains in public health, revenue protection, intellectual property enforcement and consumer safety.

Committee Resolution: The Committee noted the support for the proposed amendment.

1418. **BAHLITA supported measures to strengthen tobacco control and protect public health,** particularly by preventing minors from accessing tobacco, nicotine and alcohol products. It raised concern over illicit tobacco trade and urged the National Assembly to prioritise enforcement of existing laws. It called for proportionate, evidence-based regulation that distinguishes between combustible tobacco and alternative nicotine products, protects legitimate businesses and avoids duplication of licensing requirements. BAHLITA also called for wider public participation and stakeholder consultations before enactment of the Bill.
Committee Resolution: The Committee noted the support for the proposed amendment.

1419. **ICPAK recommended automatic adjustment of excise rates for inflation and measures to address** disparities in the taxation of emerging nicotine products.
Committee Resolution: The Committee noted the support. Clause 10 is retained, requiring periodic review of tax and price policies, adjustment for inflation, prevention of illicit trade and allocation of part of the revenue to the prevention and control of non-communicable diseases.

1420. **The Kenya Law Reform Commission (KLRC) assessed the Bill against the requirements of** section 6(1) of the Kenya Law Reform Commission Act, Cap. 3, and found it to be consistent with the Constitution. The assessment considered the Bill's conformity with constitutional values and principles, rights, institutional mandates, and the distribution of powers and functions between the national and county governments. In this regard, KLRC cited clause 17, which empowers county governments to issue licences for premises, and clause 26, which requires the Cabinet Secretary to make regulations in consultation with county governments. It concluded that the Bill adequately addresses the constitutional and institutional requirements governing the exercise of these powers and functions. KLRC further found that the Bill is consistent with existing laws, policies and regulatory frameworks, promotes institutional coherence, and strengthens public health protection through enhanced restrictions on the use of tobacco products. However, it identified a potential inconsistency between clauses 22(a)(2)(vi) and 22(b)(viii). It recommended the deletion of clause 22(b)(viii), which permits smoking in designated areas in aircraft, passenger ships and other public

conveyances, because smoking should be prohibited in these areas to ensure adequate protection of public health. The Commission also found that the Bill promotes fairness, proportionality, accountability, due process, and the protection of rights and legitimate expectations. It considered the Bill clear, accessible and easy to interpret and implement, with no significant compliance difficulties identified for particular groups. Further, KLRC found the Bill responsive to contemporary legal, technological, economic and governance developments, particularly international best practices in the regulation of tobacco products, electronic nicotine delivery systems and nicotine pouches.
Committee Resolution: The Committee noted the support for the proposed amendment.

1421. **The National Quality Control Laboratory supported the public health objectives of the Bill.** NQCL called for a coordinated laboratory system in place of an exclusive KEBS arrangement. It proposed the following division of roles: NQCL for chemical, pharmaceutical, toxicological, nicotine, impurity and emission analysis, KEBS for standards, packaging, materials, electrical and mechanical conformity, the Pharmacy and Poisons Board for medicinal products and medical devices, and the Ministry of Health for policy, approval, enforcement and recall decisions. NQCL warned that the Bill, if enacted unchanged, would create a parallel testing system and weaken its role as the Ministry of Health's national quality-control laboratory.
Committee Resolution: The Committee noted the support for the proposed amendment.

1422. **KETCA, Development Gateway, DFH-RC, WEKESWA, Child Space Organization, Nyandarua** Cancer Support Group, Mr. Fredrick Mwangi, Mr. Henry Muema Ndata and Ms. Mercy Nduta Ndung'u supported the Bill as passed the Senate on 3rd March 2026.
They attributed rising use of new nicotine products to appealing flavours, attractive packaging, social media marketing and the false belief that these products are safer. They noted that the Tobacco Control Act, 2007 does not regulate these products. They anchored the Bill in Articles 35, 42, 43(1)(a) and 46(1)(c) of the Constitution, and in Kenya's obligations under the FCTC, which Kenya ratified on 25th June 2004. **KETCA** described the Bill as timely and a significant step forward.
Committee Resolution: The Committee noted the support for the proposed amendment.

1423. **Mr. Fredrick Mwangi, a tobacco control advocate at Kenyatta University, Mr. Henry Muema** Ndata, who leads community sensitisation and youth outreach on the risks of tobacco use, and Ms. Mercy Nduta Ndung'u, a gender studies graduate with experience in gender-based violence case support, supported the Bill. Ms. Ndung'u raised concern about the exposure of young people to tobacco through targeted marketing, easy access and normalisation of use.
Committee Resolution: The Committee noted the support for the proposed amendment.

1424. **Mr. John Michael Obure Obure supported the objective of the Bill to protect children and to** regulate new products such as vapes and nicotine pouches. He supported raising the minimum purchase age to 21 years and the ban on packaging that resembles **sweets**

or toys. He urged the Committee to conduct a regulatory impact assessment on jobs and illicit trade before the Second Reading of the Bill.

Committee Resolution: The Committee noted the support. The Committee did not adopt the proposal to raise the minimum age to twenty-one years, as eighteen years is the age at which a person ceases to be a child under Article 260 of the Constitution and the Children Act, Cap. 141.

1425. **Blue Cross Kenya supported the Bill. It stated that tobacco use kills about 12,000 Kenyans every** year and costs the economy Kshs. 45 billion a year in treatment costs and lost productivity. Kenya spends 3 dollars on health and economic costs for every 1 dollar it earns in tobacco revenue. In 2022, 46 percent of 2,000 patients under treatment for chronic respiratory disease, cardiovascular disease, diabetes, cancer and tuberculosis had a history of tobacco use. Adult tobacco use fell from 11.6 percent in 2014 to 8.5 percent (2.3 million adults) in 2022. 6.5 percent (622,000) of adolescents aged 10 to 17 years have tried tobacco, and 6.2 percent of adults use nicotine pouches. The organisation attributed rising use of new nicotine products to appealing flavours, attractive packaging, social media marketing and the false belief that these products are safer. It anchored the Bill in Articles 35, 42, 43(1)(a) and 46(1)(c) of the Constitution and in the WHO Framework Convention on Tobacco Control (FCTC), which Kenya ratified on 25th June 2004. Blue Cross Kenya urged the Committee to adopt the following provisions without amendment:

1) regulation of the sale and distribution of electronic cigarettes, including the ban on flavours, online marketing and delivery, and mandatory health warnings,
2) tax policy adjustments that account for inflation,
3) restrictions on advertising and marketing near institutions of basic education,
4) the ban on online marketing and delivery, since online platforms cannot verify age,
5) the ban on products that resemble toys, sweets or other items that appeal to children,
6) registration and licensing requirements, product approval and product testing,
7) county representation on the Tobacco Control Advisory Committee and a county role in policy and licensing,
8) the increase in health warnings from 40 percent to 75 percent of packaging and the introduction of plain packaging, and
9) the prohibition of single-use plastics in tobacco products.

Committee Resolution: The Committee noted the support for the proposed amendment.

1426. **Okwach and Company Advocates submitted that the Bill, as drafted, duplicates regulatory** functions that the Standards Act, the Excise Duty Act and the Pharmacy and Poisons Act already assign to KEBS, KRA and the Pharmacy and Poisons Board. The firm also raised concerns under Articles 24, 27, 40 and 46 of the Constitution on the proposed restrictions on location, online sales and product information.

Committee Resolution: The Committee did not adopt the proposal. The Committee resolved to align the Bill with the Constitution and other statutory frameworks.

1427. **PERAK submitted that the Tobacco Control Act already prohibits the sale of tobacco products** to minors and penalises offenders. Stronger enforcement of these provisions offers more immediate value than new product bans that are harder to police. PERAK warned that the Bill, if enacted unchanged, could drive consumers back to combustible cigarettes or into black markets where products are unregulated, untaxed and potentially more harmful.

Committee Resolution: The Committee noted the submission. The Committee observed that a complete ban of the novel nicotine products is not desirable as it would lead to an increase in illicit trade in nicotine products. The Committee resolved to retain a regulation model where electronic nicotine delivery systems are subject to limits on volume, nicotine concentration, additives and to child-proofing and leakage requirements, in addition to pre-market approval, flavour restrictions and the ban on online sales and nicotine pouches.

1428. **Tobacco farmers from Bungoma County** submitted that:

1) thousands of farmers and their families depend on tobacco farming for income. The Government should phase in any regulatory change and provide practical alternative livelihood programmes to prevent loss of income and rural poverty,
2) overly restrictive provisions will drive demand to illicit markets, weaken legal value chains, reduce government revenue and hurt farmers who rely on the legitimate market,
3) Parliament should give priority to issues that affect ordinary Kenyans, including the cost of living, unemployment, healthcare access and food security, and
4) the tobacco sector already operates under an extensive framework under the Tobacco Control Act and related regulations. The Government should enforce existing law before introducing new restrictions, to avoid unnecessary burdens on farmers, retailers and other actors in the legal value chain.

Committee Resolution: The Committee noted the general comments.

1429. **Mr. David Ogoro grounded his submission in Articles 43(1)(a) and 54(1)(e) of the Constitution** and the principle of leaving no one behind. He sought equal access to health information on tobacco products for persons with disabilities.

Committee Resolution: The Committee noted the general comments.

1430. **The Retail Trade Association of Kenya (RETRAK) represents retail outlets in the** supermarket, specialty and food retail sectors, and its members sell tobacco and nicotine products. RETRAK commended Parliament for its efforts on public health and stated that it supports legislative and enforcement action on tobacco. It argued, however, that several proposals in the Bill would prove counter-productive and would undermine public health

objectives, legitimate business and revenue collection. RETRAK estimated that illicit tobacco and nicotine products now make up nearly half of the market because of weak enforcement. It called for regulation that reflects differences in risk between products, and urged the National Assembly to favour education, awareness and sensitisation over prohibition. RETRAK asked the Committee to engage the public and consumers meaningfully, and stated that it had attached more than 6,000 individual submissions from its members.

Committee Resolution: The Committee noted the submission. The Committee did not adopt a separate risk-based regulatory category. The Bill already provides for pre-market approval and testing of each product (sections 14C–14I), in which the risk of a product is assessed.

1431. **Faraja Cancer Support Trust, SOCHE, Slum Child Foundation, SHAPE, Elewa Ulevi** Consultancy, supported the Bill, which the Senate passed on 3rd March 2026. They stated that the Bill regulates the sale and distribution of e-cigarettes, including a ban on flavours, online marketing and delivery, and requires health warnings. It strengthens tobacco taxation to meet health and revenue goals. It protects minors by barring tobacco marketing near institutions of basic education, banning online sale and delivery where age verification is impossible, and banning products that resemble toys or sweets. It introduces registration, licensing, pre-market approval and testing of products. It gives counties a seat on the Advisory Committee and a role in policy and licensing. It raises health warnings from 40 percent to 75 percent of the pack and introduces plain packaging. It also protects the environment by prohibiting single-use plastics in tobacco products. These stakeholders cited evidence that tobacco use kills about 12,000 Kenyans a year and drives cancer, cardiovascular disease, chronic respiratory disease and diabetes. In 2022, 46 percent of 2,000 patients under treatment for these conditions and tuberculosis had a history of tobacco use. Tobacco use costs the economy KSh 45 billion a year, and Kenya spends 3 dollars on its consequences for every 1 dollar of tobacco revenue. Adult tobacco use fell from 11.6 percent in 2014 to 8.5 percent, or 2.3 million people, in 2022. Among university students, 12 percent use a tobacco product, 5.8 percent use e-cigarettes and 4.2 percent use nicotine pouches. Among adolescents aged 10 to 17 years, 6.5 percent (622,000) have tried tobacco and 2.5 percent (244,000) used it in the last 30 days. The stakeholders attributed rising use of new nicotine products to appealing flavours, attractive packaging, social media marketing and the false belief that these products are safer. They noted that the Tobacco Control Act, 2007 does not regulate these products, and anchored the Bill in Articles 35, 42, 43(1)(a) and 46(1)(c) of the Constitution and in the WHO Framework Convention on Tobacco Control, which Kenya ratified on 25th June 2004. Faraja Cancer Support Trust provides free psychosocial support to cancer patients and their families, pays for treatment for needy patients and reaches more than 10,000 people a year. SOCHE, the umbrella body for Community Health Officers and Assistants registered under the Societies Act, stated that the Bill directly affects the health of the communities its members serve. Slum Child Foundation works with vulnerable children in marginalised communities on education, child protection and substance abuse.

Committee Resolution: The Committee noted the support for the proposed amendment.

1432. **Bunge la Mwananchi from branches in Laikipia, Tharaka-Nithi and Meru Counties submitted as follows:**

(a) **Regulatory Burden, Fairness and equality:** A conclusive reading of the Bill shows that the Bill establishes multiple regulatory entry points including product-level controls, operator registration requirements and premises based licencing obligations

Justification: Bunge la Mwananchi opine that;

(i) when considered together, these mechanisms create a layered compliance structure applied to a single category of lawful activity. From constitutional governance perspective, this raises important questions and whether the cumulative effect of the framework treats similarly situated economic actors in a consistent and equitable manner,

(ii) Article 27 of the Constitution requires that all persons be treated equally before the law, unless a clear reasonable and justifiable basis exists for differentiation,

(iii) where regulatory obligations are applied in a fragmented or overlapping manner without Integration, the practical result may be uneven compliance expectations and disproportionate administrative burden on certain categories of operators, particularly small-scale actors,

(iv) the issue is therefore not the legitimacy of regulations itself, but whether the structure of regulation maintains internal coherence, proportionality, and equal treatment in application.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. The Committee further resolved that that the statutory compliance frameworks are intended to protect public health and must apply uniformly, regardless of the size of the establishment. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

1433. **Administrative Justice and Decision-Making Certainty:** The Bill introduces timelines for regulatory approvals but does not clearly define the legal consequences where administrative authorities fail to act within the stipulated period.

Justification: The group submits that;

(i) from a citizen's perspective, this creates a structural gap between statutory timelines and enforceable outcomes, particularly where approval is a prerequisite for lawful economic participation.

(ii) Article 47 of the Constitution guarantees fair administrative action that is expeditious, efficient, lawful and procedurally fair.

(iii) where legislation establishes timelines without corresponding legal consequences for non-compliance, there is a risk that administrative processes may become open-ended in practice, undermining predictability and certainty for applicants.

(iv) for regulatory systems that directly affect livelihoods and business operations, clarity in administrative outcomes is a key component of constitutional governance.

Committee Resolution: The Committee noted the submission. The Committee noted that any delay in administrative decisions is remedied through Article 47 of the Constitution and the Fair Administrative Action Act, Cap. 7L, and the Committee did not adopt deemed approval of products that have not been assessed.

1434. **Devolution and regulatory coherence**: The Bill distributes regulatory responsibilities across both national and county levels

Justification: The group states the following;

(i) while devolution is a constitutional principle, it's effectiveness depends on the existence of clear, functional boundaries and coordinated implementation mechanisms,

(ii) where market access, licensing and enforcement responsibilities are dispersed across multiple independent authorities without harmonization, the result may be inconsistent application of rules and uncertainty for regulated actors operating across county boundaries

(iii) from a governance standpoint, regulation should therefore ensure that devolved functions operate within a framework that preserves national regulatory coherence while respecting county implementation roles,

(iv) this is essential to maintain predictability, reduce regulatory conflict, and ensure regulatory conflict, constitutional principles of orderly governance are upheld.

Committee Resolution: The Committee did not adopt the proposal. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures for issuing licences are a matter for county legislation. Further, the Committee resolved to limit the registration requirements under the proposed new clause 21A to manufacturers and importers.

1435. **Sen. Catherine Muyeka Mumma, CBS, MP,** the Senate Sponsor of the Bill, made the following general comments:

(a) The Senate Sponsor forwarded a Public Participation Brief on the Bill to the Chairperson of the Departmental Committee on Health through the Clerk of the National Assembly, by letter Ref. CMM/24092026 dated 24th September 2026, and requested that the Brief be received as part of the material before the Committee. She stated that she would be happy to appear before the Committee at any other convenient time to present the Brief and respond to questions.

(b) Kenya's Tobacco Control Act was enacted for a market dominated by conventional tobacco products. The nicotine market has since changed materially. Electronic nicotine delivery systems (ENDS), disposable and rechargeable vapes, nicotine pouches, synthetic nicotine formulations, high-capacity devices, online retail and influencer-led marketing now operate in

Kenya, but the principal Act does not contain a comprehensive product-control framework for them.

(c) The policy choice is between an enforceable framework for products already on the Kenyan market and continued reliance on voluntary retail practice in a market where product potency, capacity, online access and youth-facing appeal have moved faster than the law.

(d) Online access is immediate. Current Kenyan vape retailers openly advertise same-day delivery in Nairobi, countrywide shipping, M-Pesa or cash payment and discreet delivery. The practical transaction can therefore take place entirely away from a licensed physical counter.

(e) Age warnings on a website are not the same thing as verified age control. Some current websites display 18+ warnings or state that an ID may be requested. Earlier market testing undertaken during preparation of this Bill showed the weakness of relying on that alone. Actual orders were completed and delivered without ID authentication.

(f) In a July 2025 market test, a disposable vape advertised at 12,000 puffs was bought from Vape Soko, Nairobi, for KSh 2,800 and delivered in approximately 45 minutes, a disposable vape advertised at 2,500 puffs was bought from Vape Delivery Nairobi for KSh 1,500 and delivered in approximately 30 minutes, and an Elf Bar Blue Razz advertised at 9,000 puffs was bought from Moran Vapes for KSh 2,400 and delivered in under 60 minutes. The Vape Soko website required only an 18+ self-confirmation, and no ID authentication was required on delivery in any of the three purchases.

(g) The products purchased did carry warnings, but the warnings were inconsistent, manufacturer or foreign-market specific and visually secondary to flavour, brand and puff-count presentation. None of the three products examined reflected the standardized Kenyan warning architecture now proposed in the Bill, including 75% front-and-back warnings in English and Kiswahili, plain-packaging requirements and harmonized retail health information.

(h) The products are increasingly high-capacity. Current Kenyan listings include devices advertised at 10,000, 15,000, 16,000, 20,000, 25,000, 30,000, 40,000 and even 50,000 puffs. This is materially different from a market in which device volume is capped and products are subjected to pre-market controls. Puff counts are advertised claims and not a standardized dose measure, but on the former United Kingdom benchmark of 2 ml and about 600 puffs, a 25,000-puff device is roughly forty-two units' worth of advertised puffs.

(i) Youth appeal is built into product presentation. Fruit, candy, dessert, mint and mixed flavours, bright designs and compact devices reduce the visual and sensory association with traditional cigarettes and can make nicotine use easier to experiment with and conceal.

(j) School discipline operates too late. A teacher can confiscate a vape only after the learner has obtained it. Effective regulation must therefore operate

upstream, at manufacture/import, product approval, retail licensing, online sale, advertising, packaging and proximity to institutions serving minors.

(k) The youth-protection case is cumulative. A minimum-age rule by itself does not address a product that can be discovered on social media, ordered from a phone, paid for remotely, delivered by a rider, concealed easily, sold in sweet flavours and purchased in a single high-capacity device.

(l) In response to the argument that "The Bill bans vaping", the Senate Sponsor submitted that it does not. The Bill regulates market entry, product composition, sale, packaging, advertising and use. It proposes a regulated-market model rather than the prohibition models used in jurisdictions such as Singapore and Uganda.

(m) In response to the argument that "Vapes are less harmful than cigarettes, so they should face lighter controls", the Senate Sponsor submitted that a relative-risk claim does not answer the separate questions of youth initiation, nicotine dependence, product safety, misleading marketing and consumer disclosure. Even jurisdictions that distinguish vaping from smoking still regulate concentration, ingredients, market entry and youth access.

(n) Puff count itself is generally not the legal unit of regulation. Jurisdictions regulate measurable variables such as nicotine concentration, tank or container volume, ingredients, flavours, registration, retail channels and age access. The United Kingdom provides the clearest capacity comparator because its 2 ml device limit was commonly treated by Trading Standards as approximately 600-650 puffs before the 2025 prohibition on single-use vapes. Singapore and Uganda prohibit the product market, Australia uses a therapeutic and pharmacy model, and Kenya's Bill is significantly less restrictive than Singapore's and materially less restrictive than Australia's.

(o) The Tobacco Control (Amendment) Bill, 2024 is broader than ENDS limits alone. It includes a Tobacco Control Advisory Committee with county and youth representation, county licensing of premises, dealer registration, product approval and KEBS testing, digital advertising controls, school buffers, warnings and smoke-free protections.

Committee Resolution: The Committee noted the general comments.

1436. **Coulson Harney LLP** submitted as follows:

General Comments:

(a) Creation of a separate "nicotine product" category, distinct from "tobacco product," with a proportionate regulatory framework reflecting the different risk profiles of combustible and non-combustible products.

(b) Introduction of statutory criteria for pre-market approval, an independent appeal mechanism, deemed-approval provisions, and a 24-month transitional safe harbour for existing products.

(c) Replacement of the blanket online-sales ban with a regulated framework requiring age verification at point of sale and delivery.

(d) Amendment of the blanket flavour prohibition to target only flavours with demonstrated youth appeal, based on objective criteria.

(e) Correction of the misleading premises warning (section 34A(1)(d)) to remove language implying risk equivalence between ENDS/nicotine pouches and combustible tobacco.

(f) Introduction of mandatory Regulatory Impact Assessment, public consultation, and Parliamentary oversight for regulations made under the expanded section 53 powers.

(g) Harmonisation of county licensing with national minimum standards to prevent regulatory fragmentation.

(h) Risk-proportionate taxation, with combustible products bearing a commensurately higher tax burden than reduced-risk alternatives.

Committee Resolution: The Committee noted the general comments. The Committee did not adopt a separate risk-based regulatory category. The Committee did not adopt deemed approval of products that have not been assessed, and noted that any delay in administrative decisions is remedied through Article 47 of the Constitution and the Fair Administrative Action Act, Cap. 7L. The prohibition on online sales in proposed section 19A is retained, since age cannot be reliably verified online. The Committee retained section 14J, as appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people, and did not adopt the proposal to dilute the point-of-sale warning. The Committee noted that the Statutory Instruments Act, Cap. 2A requires regulatory impact assessment and public consultation before regulations of significant impact are made. The Committee noted that trade licensing is a function of county governments under section 7 of Part 2 of the Fourth Schedule to the Constitution, and that the procedures and timelines for issuing licences are a matter for county legislation. The Committee resolved to limit registration under the proposed new section 21A to manufacturers and importers. Excise duty on tobacco and nicotine products is mainly imposed under the Excise Duty Act, Cap. 472, and the rates may only be varied through the legislative process for tax measures under Articles 114, 209 and 210 of the Constitution.

4.5 Public Hearings in the Counties

1437. During the public hearings exercise, members of the public were sensitized on the Bill and afforded an opportunity to engage in public discussion by making oral and written submissions on the Bill. They submitted as follows:

i. Tharaka Nithi County

1438. The public hearing exercise was held at Kaanwa Market, Mariani on Friday, 25th September 2026 between 9.00 am and 12.00 noon.

With respect to the Bill, the members of public submitted as follows:

(a) there is need to regulate other nicotine products as is proposed in the Bill which will ensure protection of the tobacco which is a cash crop grown in the area;
(b) the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) should be included in the composition of the Tobacco Control Advisory Board;
(c) there is need to include provisions on the regulation of "shisha";
(d) for practicability purposes, the 100m buffer should be expanded to 300m or more;
(e) remove the requirement of licence for selling tobacco products;
(f) remove the ban of the use of flavours in tobacco products since this is discriminatory as flavours is allowed in other products such as alcohol;

ii. Meru County

1439. The public hearing exercise was held at Kamunde Hall, Meru Town on Friday, 25th September 2026 between 2.30pm and 4.30pm.

The members of public submitted as follows:

(a) online purchases may be retained with the introduction of age restriction mechanisms;
(b) the regulation will raise the cost of cigarettes and other products making the unaffordable by consumers;
(c) the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) should be included in the composition of the Tobacco Control Advisory Board;
(d) the solatium compensatory contribution to the Tobacco Control Fund to be set at a minimum of 2%
(e) the provision on product approval by the Cabinet Secretary imposes unnecessary strict liability on retailers;
(f) introduce a definition of "tobacco control" in the Bill;
(g) Kenya Bureau of Standards to be the responsible agency in setting standards for tobacco products;
(h) remove the requirement of obtaining county licences for the sale of tobacco products since traders are already overburdened;
(i) remove the ban of the use of flavours in tobacco products since this is discriminatory as flavours is allowed in other products such as alcohol;

iii. Laikipia County

1440. The public hearing exercise was held at Inoro Girls High School, Nanyuki Town on Saturday, 26th September 2026 between 9.00am and 1.00pm.

The members of public submitted as follows:

(a) restrictions placed by the Bill will harm small scale traders and will eventually raise the cost of tobacco products;
(b) remove the ban on the use of single use plastics as this is already covered under environmental laws;
(c) the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) should be included in the composition of the Tobacco Control Advisory Board;
(d) the powers given to the Cabinet Secretary by the Bill are subject to abuse;

(e) the Bill should include proposals to regulate the sale and use of "shisha";
(f) the provision on product approval by the Cabinet Secretary imposes unnecessary strict liability on retailers;
(g) remove the ban on online selling as this akin to punishing innovation;
(h) Kenya Bureau of Standards to be the responsible agency in setting standards for tobacco products;
(i) remove the requirement of obtaining county licences for the sale of tobacco products since traders are already overburdened;
(j) remove the ban of the use of flavours in tobacco products since this is discriminatory as flavours is allowed in other products such as alcohol;

iv. Uasin Gishu County

1441. The public hearing exercise was held at the County Commissioner's Social Hall, Eldoret Town, on Friday, 25th September 2026 between 9.00 am and 12.00 noon.

The members of public submitted as follows:

(a) the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) should be included in the composition of the Tobacco Control Advisory Board;
(b) the Bill should address the effects of tobacco and nicotine products on health;
(c) the Bill should include provisions on the regulation of "shisha";
(d) Kenya Bureau of Standards to be the responsible agency in setting standards for tobacco products;
(e) remove the requirement of obtaining county licences for the sale of tobacco products since traders already pay many licences and levies;
(f) remove the ban on the use of flavours in tobacco products since this is discriminatory as flavours are allowed in other products such as alcohol;
(g) the provision on product approval by the Cabinet Secretary makes retailers strictly liable for products they do not manufacture;
(h) illicit trade in tobacco and nicotine products is rising in the County, and the Government should step up enforcement against smuggled and untaxed products;
(i) more restrictions on sale will push consumers to cheaper illicit products and grow the illicit market;
(j) an illicit cigarette brand called "Oris" is sold in the local market, and enforcement agencies should remove it from the market.

v. Bungoma County

1442. The public hearing exercise was held at Bungoma Social Hall, Bungoma Town, on Friday, 25th September 2026 between 2.00 pm and 4.00 pm.

The members of public submitted as follows:

(a) the law should prohibit the sale of tobacco and nicotine products to children;
(b) only designated premises, and not every shop, should sell tobacco and nicotine products;
(c) the new nicotine products do not offer a safer alternative, and they draw children into addiction;

(d) the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) should be included in the composition of the Tobacco Control Advisory Board;
(e) remove the ban on the use of flavours in tobacco products since flavours remain lawful in other products such as alcohol;
(f) remove the requirement of obtaining county licences for the sale of tobacco products;
(g) tobacco farmers raised concern over the stability of their income, since tobacco farming gives them a steady income to support their families and educate their children;
(h) the Bill should protect tobacco as a cash crop grown in the County and safeguard the livelihoods of contracted farmers;
(i) the proposed regulations will raise the price of cigarettes and other products beyond the reach of consumers;
(j) illicit trade in tobacco and nicotine products is rising, and the Government should take firm measures to curb it, including at the border;
(k) more restrictions on sale will fuel illicit trade and hurt licensed traders who pay taxes.

vi. Kisumu County

1443. The public hearing exercise was held at the Tom Mboya College Hall, Kisumu City, on Saturday, 26th September 2026 between 9.00 am and 1.00 pm.

The members of public submitted as follows:

(a) the Bill should include proposals to regulate the sale and use of "shisha";
(b) the powers given to the Cabinet Secretary by the Bill are subject to abuse;
(c) online sales of tobacco and nicotine products may be retained with the introduction of age verification;
(d) remove the ban on the use of flavours in tobacco products;
(e) remove the ban on the use of single use plastics as this is already covered under environmental laws;
(f) the Government should implement the regulations in phases;
(g) tobacco farmers raised concern over the stability of their income, since tobacco farming gives them a steady income to provide for their families and pay school fees;
(h) the Bill should balance public health goals with the livelihoods of farmers, traders and workers in the tobacco value chain;
(i) illicit trade in tobacco and nicotine products is growing, and more restrictions on sale will expand the illicit market.

vii. Nairobi City County

1444. The public engagement was held at County Hall, Parliament Buildings, on Thursday, 24th September 2026 between 9.00 am and 12.30 pm. The issues raised were similar to those raised in the other counties.

The members of public submitted as follows:

(a) the requirement for a county licence and for registration with the Ministry of Health amounts to double licensing, which duplicates compliance requirements and raises the cost of doing business for traders;

(b) the restriction on sale within 100 metres of premises primarily serving persons under eighteen years is not practical, particularly in dense urban areas where schools, shops and homes stand close together;
(c) the Bill should retain flavours in tobacco and nicotine products for adult consumers;
(d) illicit trade in tobacco and nicotine products is rising, and more restrictions on sale will expand the illicit market and reduce government revenue;
(e) second-hand smoke from designated smoking areas affects persons in the surrounding places, and the Bill should protect them from such exposure;
(f) the Bill should be amended to increase tax on tobacco products to support health;
(g) the Bill should be amended to differentiate products according to the risk they pose, on the basis of evidence, and to define "tobacco product" and "harm reduction" to reflect a risk continuum;
(h) the Bill should be supported by best practice and evidence and there should be consideration on limiting youth addiction; and
(i) The youth are targeted online and we should be able to extend regulations to cover this space and protect the youth.

Committee Resolution: The Committee noted the general comments made by members of the public during the public hearings.

CHAPTER FIVE: COMMITTEE OBSERVATIONS

4.0 COMMITTEE OBSERVATIONS

1445. The Committee observed that;

(1) On regulation of novel nicotine products, the Bill is necessary to regulate nicotine products, Electronic Nicotine Delivery Systems (ENDS) and Electronic Non-Nicotine Delivery Systems (ENNDS), which are not currently regulated under the Tobacco Control Act, Cap. 245A, and to close the regulatory gaps that have affected the effective control of tobacco and nicotine products. However, a complete ban of all novel nicotine products may lead to an increase in illicit trade in nicotine products. Therefore, a regulated model under which ENDS are subject to limits on volume, nicotine concentration, additives, child-proofing and leakage requirements, pre-market approval, flavour restrictions and the ban on online sales, provides more effective control. Further, neither the title nor the long title of the Tobacco Control Act, Cap. 245A refers expressly to nicotine products. In addition, nicotine products approved as tobacco cessation products or other medicinal substances serve a therapeutic purpose where they are marketed and sold or prescribed exclusively for that approved purpose. Notably, shisha is currently prohibited only through the Public Health (Control of Shisha Smoking) Rules, 2017 made under the Public Health Act, Cap. 242 and which carry low penalties.

(2) On the proposal for a separate risk-based or modified-risk category of products, e-cigarettes and nicotine pouches contain nicotine and cause addiction, particularly among young people, regardless of whether they are combustible or non-combustible, hence the health risks associated with the use of nicotine products exist in both categories of products.

(3) Prescribing the limits on volume and nicotine concentration in statute promotes legal certainty and eases implementation and enforcement, whereas leaving these limits to be prescribed by the Kenya Bureau of Standards, the National Quality Control Laboratory or through regulations would create uncertainty for regulators and industry.

(4) On the restriction on flavours and product design, appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people. The restrictions under the proposed sections 14J and 15 serve as a youth-protection measure and it is notable that flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, increase the attractiveness, palatability or ease of inhalation of tobacco and nicotine products. Therefore, prohibiting these product design features and additives would raise the barrier of entry into the use of tobacco and nicotine products by youth and children.

(5) With regard to the governance structure under the Act, re-establishing the Tobacco Control Board as a Tobacco Control Advisory Committee would weaken the governance, accountability and enforcement structure established under the Act. The establishment of the Tobacco Control Board as a body corporate therefore provides a stronger institutional framework.

(6) The Bill centralises wide discretionary powers in the Cabinet Secretary, including registration of manufacturers, importers, sellers and distributors, pre-market approvals, the power to ban products from the market and other operational and regulatory functions that would ordinarily be performed by the Board, whereas the role of the Cabinet Secretary is ordinarily limited to issuing policy guidelines and direction and making regulations.

(7) As regards the Tobacco Control Fund, section 8 of the Tobacco Control Act provides for the Fund to be administered by the accounting officer of the Ministry of Health, and this limits the financial independence of the Board and ability to implement and enforce the Act effectively.

(8) Section 7(4) of the Tobacco Control Act provides for the use of the Fund for research, documentation and dissemination of information on tobacco and tobacco products and for national cessation and rehabilitation programmes and the Bill further proposes treatment of chronic illnesses caused by the use of tobacco products.

(9) On the solatium compensatory contribution, under the proposed section 7(2)(f) of the Act, the contribution is payable by manufacturers and importers, and the proposals to provide for timelines for declaration and payment of the levy, offences, interest and dispute resolution relate to the collection of taxes and are better addressed under the relevant tax laws.

(10) With respect to the proposal to increase taxation on tobacco and nicotine products to 75%, excise duty on tobacco and nicotine products is imposed mainly under the Excise Duty Act, Cap. 472, and tax rates may only be varied through the relevant tax laws and the legislative process for tax measures under Articles 114, 209 and 210 of the Constitution.

(11) On pre-approval testing, section 4(1) of the Standards Act, Cap. 496, provides that the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government and at the request of the Cabinet Secretary, and hence there is no conflict between the Bill and the Standards Act or other existing laws with regard to pre-approval testing.

(12) With regard to age restriction and ban on online sales, Article 260 of the Constitution and the Children Act, Cap. 141 provide that eighteen years is the age at which a person ceases to be a child, and raising the minimum age to twenty-one years for tobacco and nicotine products alone would depart from the age of majority used across the law. Further, the

prohibition on online sales under the proposed section 19A is a necessary safeguard, since age cannot be reliably verified in online and remote transactions and children can readily access products ordered online.

(13) Regarding the restriction on sale near premises serving persons under eighteen years, the distance of one hundred metres under the proposed new section 15(5A) is reasonable, as increasing the distance to three hundred metres would, in dense urban areas, operate as a prohibition on lawful retail in large parts of towns and cities. Further, distance restrictions complement, rather than replace controls on sale to minors and reduce the visibility of products near children.

(14) With regard to packaging, labelling and health warnings, the proposed seventy-five per cent front-and-back health warnings and plain packaging in Clause 18 and the point-of-sale warnings in Clause 23 are important public health measures that apply equally to electronic nicotine delivery systems. The format, size and placement of point-of-sale warnings and other requirements on health warnings are technical matters, that are more appropriately addressed in regulations. Further, exempting duty-free retailers from packaging, labelling and product requirements would undermine the public health objectives of the Bill and create avenues for illicit trade.

(15) Concerning disposable devices and single-use plastics, disposable devices made with single-use plastics are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste. Comparable jurisdictions, such as the United Kingdom and Belgium, have banned single-use or disposable vapes, which supports the prohibition under the proposed section 21B of the Bill. However, the clearance of existing stock raises environmental safety concerns, which are addressed under the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste.

(16) With regard to advertising, promotion and sponsorship, Part V of the Tobacco Control Act prohibits advertising, promotion and sponsorship, and the existing definition of "advertisement" in the Act is broad and inclusive in line with Article 13 of the WHO FCTC, whereas the narrower definition proposed in the Bill would reduce the scope of the prohibition. Further, ordinary commercial dealings within the supply chain are not directed at consumers and are not restricted under section 30(1) of the Act, while section 19(1) of the Act prohibits only displays that permit a buyer to handle a product before paying for it. Additionally, guidelines for digital platforms are implementation matters, more appropriately provided for in regulations.

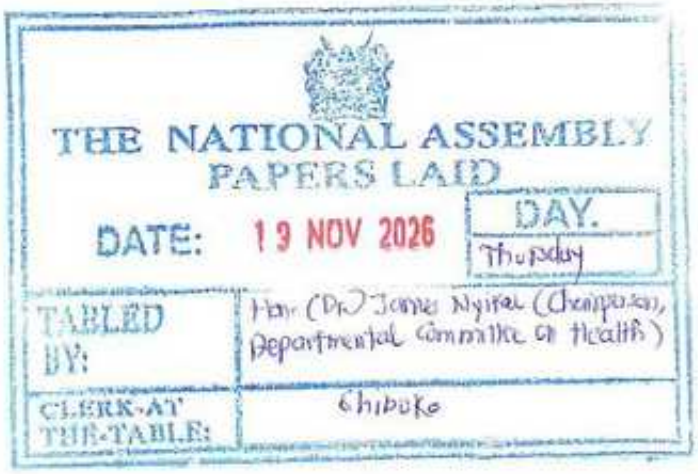
(17) With respect to licensing and registration under the proposed new sections 20A and 21A respectively, trade licensing and public health regulation are county functions under the Fourth Schedule to the Constitution, and the procedures and timelines for issuing licences

are matters for county legislation. Therefore, registration of retailers under the proposed section 21A would result in dual regulation of retailers. Additionally, the manner of registration and related administrative matters are implementation matters, more appropriately provided for in regulations.

(18) With regard to transitional provisions, persons dealing in tobacco and nicotine products regulated under the Act require a reasonable period within which to comply with the new requirements. A transitional period would, however, not be appropriate for nicotine pouches and shisha, which are prohibited under the proposed legal framework.

CHAPTER SIX: COMMITTEE RECOMMENDATIONS

1446. The Committee having considered the **Tobacco Control (Amendment) Bill 2024 (Senate Bill No. 35 of 2024)** recommends that the House approves the Bill with amendments. The amendments are set out in Chapter Seven of this report.



CHAPTER SEVEN

7.0 SCHEDULE OF AMENDMENTS

Upon considering the **Tobacco Control (Amendment) Bill, 2024 (Senate Bill No. 35 of 2024)** and submissions from stakeholders, the Committee proposes the following amendments—

NEW CLAUSE 1A

THAT, the Bill be amended by inserting the following new clause immediately after clause 1—

Amendment of section 1 of Cap. 245A.

1A. Section 1 of the Tobacco Control Act, (in this Act referred to as "the principal Act"), is amended by deleting the words "Tobacco Control Act" and substituting therefor the words "Tobacco and Nicotine Control Act".

Justification: To change the short title of the principal Act to the Tobacco and Nicotine Control Act, so that the title reflects the expanded scope of the Act, which now regulates nicotine products, including electronic nicotine delivery systems, in addition to tobacco products.

CLAUSE 2

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Amendment of the long title of Cap. 245A.

2. The long title of the principal Act is amended by inserting the words "and nicotine products, including electronic nicotine delivery systems," immediately after the words "tobacco products".

Justification: To expressly refer to nicotine products, since the Bill brings electronic nicotine delivery systems and other nicotine products within the scope of the Act.

CLAUSE 3

THAT, clause 3 of the Bill be amended—

(a) by deleting paragraph (a);

(b) in paragraph (c) by deleting the proposed new definition of "ingredients" and substituting therefor the following new definition—

"ingredients" means the substances added to tobacco products during the manufacturing process or arising from agricultural practices, including—

(i) tobacco, nicotine and chemicals used in the creation of aerosol or vapour in electronic cigarettes and related products;

(ii) components and materials used in the manufacture of those components;

(iii) additives and processing aids;

(iv) residual substances resulting from agricultural practices, storage and processing;

(v) substances that migrate from the packaging material into the product or are otherwise present in the product; and

(vi) constituents, emissions, contaminants and by-products generated during the heating, aerosolisation, storage or use of the product;

(c) by deleting paragraph (f);

(d) in paragraph (g) by deleting the proposed new definition of "smoking" and substituting therefor the following new definition—

"smoking" means inhaling or exhaling the smoke, aerosol or vapour of any tobacco or nicotine product, or of any other substance delivered through an electronic nicotine delivery system or shisha, whether or not the smoke, aerosol or vapour contains nicotine and whether or not it is visible, and includes the holding of, or control over, any ignited, heated or activated tobacco or nicotine product, electronic nicotine delivery system or shisha;

(e) in paragraph (h) by deleting the proposed new definition of "tobacco product" and substituting therefor the following new definition—

"tobacco product" means any product made or derived, wholly or partly from—

(i) tobacco, including tobacco leaf and any extract of tobacco;
(ii) nicotine from any source, including synthetic nicotine formulations; or
(iii) a nicotine analogue,

that is intended, designed or marketed to be consumed by smoking, heating, inhalation, chewing, sniffing, vaping or sucking or by any other means, and includes an electronically heated tobacco product whether or not it contains nicotine, cigarette papers, tubes and filters and any solution or liquid intended for use in such devices but does not include a nicotine product approved as a tobacco cessation product or other medicinal substance under the Pharmacy and Poisons Act where the product is marketed and sold or prescribed exclusively for that approved purpose;

(f) by deleting paragraph (i) and substituting therefore the following new paragraph—

(i) inserting the following new definitions in their proper alphabetical sequence—

"additive" means a substance, other than tobacco, that is added to a tobacco or nicotine product, unit pack or container pack during the manufacturing process or through agricultural practices;

"aerosol" means a suspension of fine solid particles or liquid droplets in the air or other gas that is generated by heating, vaporising or otherwise activating a tobacco or nicotine product, an electronic nicotine delivery system or any other substance, and which is capable of being inhaled;

"characterising flavour" means a smell, taste or other sensory effect, other than one of tobacco, before, during or after the consumption of a product, which results from an additive or a combination of additives, including fruit, spice, herbs, alcohol, candy, menthol, cooling agents, sweeteners, sweetness enhancers or related flavouring agents, and includes any descriptor, name, image

or concept such as "ice", "cool", "fresh", "chill" or "smooth" that conveys a flavour or sensory effect;

"Chief Executive Officer" means the Chief Executive Officer of the Board appointed under section 5H;

"electronic cigarette" means a product that—

(a) is used for the consumption of nicotine or non-nicotine containing aerosol through a mouth piece or nasal piece, or by any other means of inhalation, or a component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether the product is for one-time use or refillable by means of a refill container and a tank or rechargeable with single use cartridges); and

(b) is not a medical product or a medical device as defined in the Pharmacy and Poisons Act;

"electronic nicotine delivery system" means an electronic device, and any associated accessories, components, or parts, that is designed, manufactured, or capable of being used to—

(a) aerosolize, vaporize, or otherwise convert a substance into an inhalable form; and

(b) deliver such aerosol, vapour, or other substance to a person through inhalation,

whether or not the substance contains nicotine, and includes but is not limited to electronic cigarettes, electronic cigars, electronic cigarillos, electronic hookahs, vape pens, vape pods, and similar devices, regardless of their shape, size, or appearance;

"flavouring agent" means an additive or a combination of additives, including a cooling agent, sweetener or sweetness enhancer, that imparts or enhances a smell, taste or other sensory effect other than that of tobacco;

"institution of basic education and training" has the meaning assigned to it under the Basic Education Act;

"nicotine analogue" means any substance, whether natural or synthetic, that is chemically or structurally similar to nicotine, or that is designed to produce or produces pharmacological effects similar to those of nicotine when consumed;

"nicotine pouch" means a pouch that contains nicotine, nicotine analogues, flavourings, sweeteners or plant based fibres derived from tobacco plant or synthetic nicotine;

"nicotine product" means a product containing nicotine but does not include a product containing nicotine that has been approved as a tobacco

cessation product or other medicinal substance: Provided that the product is marketed and sold or prescribed exclusively for that approved purpose;

"tobacco smoke" means—

(a) smoke, fumes, gases, or particulate matter produced by the burning, heating, or combustion of tobacco or any tobacco or nicotine product; or

(b) aerosol, vapour, or emissions produced by the use of an electronic delivery system,

and includes any combination thereof, whether visible or invisible, that is released into the air and capable of being inhaled by persons in the vicinity;

"plain packaging" means the packaging of a tobacco product, including the unit pack and any outer packaging, from which logos, colours, brand images and promotional information are removed or restricted, other than the brand and variant names displayed in a standard colour and font style, as may be prescribed;

"principal display area" means the front and back surfaces of the unit pack or outer packaging of a tobacco product that are most likely to be displayed or visible to a consumer at the point of sale or during use;

"shisha" means any tobacco product that may be flavoured or non-flavoured and may contain molasses, honey, vegetable glycerol or any other natural or artificial flavor or any other substance, whether or not it contains nicotine, that is intended to be heated and smoked or inhaled through a water pipe, hookah or similar apparatus, and includes the water pipe, hookah or apparatus used for that purpose;

"shisha smoking" means the consumption of shisha using a single or multi-stemmed smoking instrument where the smoke is designed to pass through water or other liquid before reaching the smoker;

"smokeless tobacco product" means a product that is entirely or partly made of the leaf tobacco, as raw material and is consumed through chewing, sucking, sniffing or any other means of oral consumption; and

"unit pack" means the smallest individual packaging in which a tobacco or nicotine product or related product is, or is intended to be, presented for retail sale.

Justification: The amendment to paragraph (a) retains the definition of "Board" in the principal Act, consistent with the Committee's resolution to retain the Tobacco Control Board.

The existing broad definition of "advertisement" in the Act is retained and the narrower definition in the Bill is deleted.

The definition of "ingredients" is expanded to capture emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations cover what the user is actually exposed to.

The definition of "smoking" is made technology-neutral to prevent evasion of smoke-free requirements through re-labelling of products as nicotine-free or herbal. Nicotine products approved as cessation products or other medicinal substances and sold exclusively for that purpose are excluded from the definition of "tobacco product" and "nicotine product".

The definition of "characterising flavour" deletes the vague words "clearly noticeable" and extends to cooling agents, sweetness enhancers and descriptors so that the prohibition in section 14J cannot be defeated by reformulation.

The new definitions of "aerosol", "flavouring agent", "nicotine analogue", "plain packaging", "principal display area" and "shisha" clarify terms used in the Bill and give effect to section 14J and Clauses 18 and 23.

The definition of "electronic cigarette" is extended to inhalation through the nose, and shisha is expressly included in the definition of "electronic nicotine delivery system" for clarity of implementation and enforcement.

The definition of "Committee" is deleted as a consequence of retaining the Board.

CLAUSE 4

THAT, the Bill be amended by deleting clause 4.

Justification: Paragraphs (a) and (b) of clause 4 are consequential amendments that would replace references to the "Board" with the "Committee", which are no longer necessary as the Board is retained.

The power in paragraph (c) to prohibit the manufacture, sale, distribution or importation of a non-compliant tobacco product is an operational function. The Committee resolved that this power be conferred on the Board, and it is provided for under the proposed amendment to section 6 in clause 6.

CLAUSE 5

THAT, the Bill be amended by deleting clause 5 and substituting therefor the following new clause—

Amendment of section 5 of Cap. 245A.

5. The principal Act is amended by deleting section 5 and substituting therefor the following new sections—

Establishment of the Board.

5. (1) There is established the Tobacco Control Board which shall be a body corporate with perpetual succession and a common seal.

(2) The Board shall be capable in its corporate name of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property;

(c) entering into contract; and

(d) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

Membership of the Board.

5A. (1) The Board shall comprise—

(a) a chairperson appointed by the Cabinet Secretary;

(b) the Principal Secretary responsible for matters relating to public health or a designated representative;

(c) the Principal Secretary for the National Treasury or a designated representative;

(d) the Director-General for health or a designated representative;

(e) the County Executive Committee Member responsible for health nominated by the Council of County Governors or a designated representative;

(f) one person with special expertise on matters relating to tobacco control, nominated by the Council of County Governors;

(g) one person representing the Kenya business community, nominated by the Kenya National Chamber of Commerce and Industry;

(h) one person nominated by the Kenya Medical Association;

(i) one person with special expertise on matters relating to tobacco control nominated by the Public Benefit Organizations Regulatory Authority;

(j) the chief executive officer of the National Youth Council or a designated representative;

(k) the Chief Executive Officer of the National Authority for the Campaign Against Alcohol and Drug Abuse; and

(l) the Chief Executive Officer, who shall an *ex-officio* member and the

secretary to the Board and shall have no right to vote.

(2) The members of the Board, other than the *ex-officio* members, shall be appointed by the Cabinet Secretary, by notice in the *Gazette*.

Disqualification from appointment.

5B. (1) A person shall not be appointed as a member of the Board if that person—

(a) is an employee, agent or representative of a person, company or association engaged in the manufacture, sale or distribution of tobacco or tobacco products;

(b) has any direct or indirect pecuniary interest in the tobacco industry; or

No.11 of 2025.

(c) has contravened the Conflict of Interest Act.

(2) Every member of the Board shall, upon appointment and annually thereafter, make a written declaration of any affiliation with, or interest in, the tobacco industry or its subsidiaries in the manner prescribed.

(3) A member of the Board who fails to disclose his or her affiliation to the tobacco industry or its subsidiary commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.

Qualifications of the chairperson and members.

5C. (1) A person is qualified for appointment as the chairperson of the Board if the person—

(a) holds a bachelor's degree from a university recognised in Kenya;

(b) has at least ten years of experience in public health, five of which shall be at a senior management level; and

(c) meets the requirements of Chapter Six of the Constitution.

(2) A person is qualified for appointment as a member of the Board under section 5A(1)(e), (f), (g), (h) or (i) if the person—

(a) holds a bachelor's degree from a university recognised in Kenya;

(b) has at least ten years of experience in public health, law, economics, trade or tobacco control, five of which shall be at a senior management level; and

(c) meets the requirements of Chapter Six of the Constitution.

Tenure of office.

5D. (1) The chairperson shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(2) The members of the Board referred to in section 5A(1) (f), (g), (h) and (i) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

Power to co-opt.

5E. The Board may invite any person who is not affiliated to the tobacco industry to attend a meeting of the Board for the purpose of assisting or advising the Board on any particular matter, but such person shall have no right to vote at the meeting.

Procedures of the Board.

5F. (1) Subject to this Act, the Board may regulate its own procedure.

Expenses and remuneration.

5G. (1) The expenses of the Board shall be defrayed out of—

(a) not more than three per cent of the revenue projected to be received into the Fund under section 7 in any financial year; and

(b) monies appropriated by the National Assembly for that purpose.

(2) The chairperson and members of the Board shall be paid such allowances as may be advised by the Salaries and Remuneration Commission.

Chief Executive Officer.

5H. (1) There shall be a Chief Executive Officer of the Board who shall be competitively recruited and appointed by the Board on such terms and conditions of service as the Board may determine.

(2) A person is qualified for appointment as the Chief Executive Officer if the person—

(a) holds a bachelor's degree from a university recognised in Kenya;

(b) has at least ten years of experience in public health or tobacco control, five of which shall be at a senior management level; and

(c) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(4) The Chief Executive Officer shall be responsible for the day-to-day management of the affairs of the Board and shall administer the Fund in accordance with section 8.

Staff of the Board.

5I. The Board may appoint such officers and staff as may be necessary for the proper performance of its functions under this Act.

Justification: The Committee observed that re-establishing the Tobacco Control Board as a Tobacco Control Advisory Committee would weaken the governance, accountability and enforcement structure established under the Act.

The amendment retains and strengthens the Board as a body corporate with the membership proposed in the Bill, but with the County Executive Committee Member responsible for health,

nominated by the Council of County Governors and the CEO-NACADA sitting on the Board. The Bill further retains the conflict-of-interest safeguards in section 5B and adds a requirement for declarations of interest.

The Bill also provides qualifications for members similar to those of the chairperson and limits the tenure of the chairperson to two terms of three years each.

The Cabinet Secretary's role is limited to issuing policy guidelines and directions and making Regulations under section 53 of the Act.

The expenses of the Board are met from not more than three per cent of the projected revenue of the Fund and from monies appropriated by the National Assembly, which gives the Board a secure source of funding while keeping most of the Fund available for its statutory purposes.

The amendment further provides for a Chief Executive Officer to manage the Board and administer the Fund.

CLAUSE 6

THAT, the Bill be amended by deleting clause 6 and substituting therefor the following new clause—

Amendment of section 6 of Cap. 245A.

6. Section 6 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (d)—

(da) consider and determine applications for the approval of tobacco and nicotine products under sections 14C, 14E, 14F, 14G and 14H;

(db) register manufacturers and importers of tobacco and nicotine products under section 21A;

(dc) prohibit the manufacture, sale, distribution or importation of a tobacco or nicotine product that does not comply with the provisions of this Act;

(dd) determine, in a transparent manner, the solatium compensatory contribution payable under section 7(2)(f);

(de) maintain and publish the registers of approved and banned tobacco and nicotine products and of registered manufacturers and importers;

(df) monitor and enforce compliance with this Act in collaboration with county governments and other relevant agencies;

Justification: The amendment retains the Tobacco Control Board by deleting refernces to the Tobacco Control Advisory Committee.

The Bill centralises in the Cabinet Secretary operational and regulatory functions that would ordinarily be performed by the Board, including product approvals, registration, banning of products and the determination of the solatium compensatory contribution. The amendment assigns these functions to the Board, including the power to prohibit dealing in tobacco products that do not comply with the Act.

CLAUSE 7

THAT, the Bill be amended by deleting clause 7 and substituting therefor the following new Clause—

Amendment of section 7 of Cap. 245A.

7. Section 7 of the principal Act is amended—

(a) in subsection (2) by deleting paragraph (f) and substituting therefor the following new paragraph—

(f) a solatium compensatory contribution payable by any licensed tobacco or nicotine product manufacturers or importers in the country as may be determined by the Board; and

(b) in subsection 4 by inserting the following new paragraphs immediately after paragraph (a)—

(aa) treatment of chronic illnesses caused by the use of tobacco products; and

(ab) the expenses of the Board under section 5G;

(c) by inserting the following new subsection immediately after subsection (4)—

(4A) The Board shall, at the end of every financial year, publish in the *Gazette* and on its website the rate of the solatium compensatory contribution determined under subsection (2)(f), the amounts collected into the Fund and the expenditure from the Fund during that financial year

Justification: The Committee resolved to retain the determination of the solatium compensatory contribution by the Board, subject to a requirement that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

The amendment to subsection (4) allows the expenses of the Board to be met from the Fund within the cap of three per cent of projected revenue under the proposed section 5G.

CLAUSE 8

THAT, the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Amendment of section 8 of Cap. 245A.

8. Section 8 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) The Fund shall be administered by the Chief Executive Officer of the Board, who shall be the Officer administering the Fund, in accordance with this Act, the Public Finance Management Act and any other written law.

(b) in subsection (3), by inserting the following new paragraph immediately after paragraph (d)—

(da) publish an annual report on the research activities and programmes undertaken, including the research findings and impact of the programmes.

Justification: In order to strengthen the Board to be able to implement and enforce the Act, the Fund shall be administered by the Chief Executive Officer of the Board, rather than the accounting officer of the Ministry responsible for health, in accordance with the Act, the Public Finance Management Act, Cap. 412A and other applicable laws.

CLAUSE 12

THAT, clause 12 of the Bill be amended—

(a) in the proposed new section 14A—

(i) in subsection (1) by deleting the expression "14F" appearing in paragraph (c) and substituting therefor the expression "14J";

(ii) by inserting the following new subsection immediately after subsection (1)—

(1A) A refill container shall comply with the packaging, labelling and health warning requirements under sections 21 and 34A.

(b) by deleting the proposed new section 14B and substituting therefor the following new section—

Prohibition of nicotine pouches and shisha.

14B. (1) Notwithstanding any other provision of this Act, a person shall not manufacture, import, sell, offer for sale, use, advertise, promote, distribute or in any other way deal in—

(a) nicotine pouches; or

(b) shisha.

(2) A person shall not allow, promote, facilitate or encourage or do anything to allow, promote, facilitate or encourage the smoking of shisha or the use of nicotine pouches in Kenya.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.

(c) in the proposed new section 14C by deleting the words "Cabinet Secretary" appearing in subsection (1) and substituting therefor the word "Board";

(d) in the proposed new section 14 D—

(i) by deleting subsection (2) and substituting therefor the following new subsection—

(2) Where the Board considers that the information submitted under this section is incomplete, the Board may request the manufacturer or importer to provide such further information as may be necessary for the determination of the application.

(ii) by deleting the subsection (3);

(e) in the proposed new section 14E—

(i) by deleting the words "Cabinet Secretary" appearing in subsection (2) and substituting therefor the word "Board"; and

(ii) by inserting the following new subsection immediately after subsection (2)—

(3) The cost of testing the samples under subsection (2) shall be borne by the manufacturer or importer.

(f) by deleting the proposed new section 14F and substituting therefor the following new section—

Decision on request for approval.

14F. (1) The Board shall communicate, in writing, the decision made within ninety days of a request for approval of a product being made.

(2) Where the Board declines to approve a product, it shall notify the applicant in writing of the decision and the reasons for the decision.

(3) Where the Board declines to approve a product for which approval has been sought, the manufacturer or importer shall—

(a) immediately take the corrective action necessary to bring the product into conformity with the Act if the product is an existing product;
(b) withdraw the product from the market; or
(c) recall the product.

(g) in the proposed new section 14G by deleting the words "Cabinet Secretary" appearing in subsection (1) and substituting therefor the word "Board";

(h) in the proposed new section 14H by deleting the words "Cabinet Secretary" and substituting therefor the word "Board";

(i) by deleting the proposed new section 14I and substituting therefor the following new section—

Register of approved and banned products.

14I. (1) The Board shall maintain an up-to-date register of—

(a) products that have been approved or banned from sale;

(b) the name of the authorised manufacturer or importer of each product;

(c) the date on which each product was approved or banned; and

(d) the duration and validity date of each approval.

(2) The Board shall publish the register in the *Gazette* and on the websites of the Board and the Ministry responsible for health, and shall keep the register up to date and accessible to the public.

(j) in the proposed new section 14J (1) by inserting the following new paragraphs immediately after paragraph (f)—

(g) flavouring agents, including cooling agents, sweeteners or sweetness enhancers, that increase the attractiveness, palatability or ease of inhalation of the product; or

(h) design features, including flavour capsules, or concept descriptors that convey a flavour or sensory effect or that increase the attractiveness of the product.

Justification: The cross-reference in section 14A(1)(c) is corrected to refer to section 14J, which specifies the prohibited additives, and refill containers are required to comply with the packaging and warning requirements in sections 21 and 34A.

The Committee resolved to ban nicotine pouches and shisha while regulating other nicotine products, noting that a complete ban on all novel nicotine products would lead to an increase in illicit trade. Shisha is currently prohibited only through regulations under the Public Health Act, Cap. 242, which carry low penalties, so the prohibition is placed in the Act with a penalty aligned to the other offences in the Bill.

The powers of approval, testing, banning and publication of products are assigned to the Board, and the powers of the Cabinet Secretary limited to policy direction. The amendments further require the manufacturer or importer to bear the cost of testing, require written reasons for refusal decisions, and require the register of approved and banned products to be published in the Gazette and online.

The proposed new section 14D(3) is deleted as its provisions are anti-competitive.

Section 14J is strengthened as a youth-protection measure by extending it to flavour effects, design features and concept descriptors across all tobacco and nicotine products.

CLAUSE 13

THAT, the Bill be amended by deleting clause 13 and substituting therefor the following new clause—

Amendment of section 15 of Cap. 245A.

15. The principal Act is amended by deleting section 15 and substituting therefor the following new section—

Supply to and by children.

15. (1) No person shall—

(a) sell or supply a tobacco product or nicotine product to a child; or

(b) purchase a tobacco product or nicotine product from a child.

(2) Subject to subsection (3), a person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

(3) Notwithstanding the provisions of subsection (1), it shall be a defence to an offence under this section if it is established that the accused person attempted to verify that the child was at least eighteen years of age by asking for and being shown any of the documents specified in subsection (4) for the purpose of verifying the age of the child and believed, on reasonable grounds, that the documentation was authentic.

(4) For the purposes of this section, the following documentation may be used to verify a person's age—

(a) a national identity card issued by the Republic of Kenya;

(b) a driving licence issued by the Republic of Kenya or any other country;

(c) a passport issued by the Republic of Kenya or any other country; or

(d) any other documentation as the Cabinet Secretary may prescribe.

(5) No person shall manufacture, import or sell —

(a) objects including sweets, snacks, toys, cartoon characters, popular youth motifs, or other similar objects that would reasonably appeal to persons under the age of eighteen years in designs that resemble tobacco or nicotine products; or

(b) any tobacco or nicotine product in designs that imitate sweets, snacks, toys, cartoon characters, popular youth motifs, or other similar objects that would reasonably appeal to persons under the age of eighteen years.

(6) No person shall sell a tobacco or nicotine product within a radius of one hundred metres from an institution of basic education and training, a children home, a child care facility, a children playground or any other place primarily serving persons under the age of eighteen years.

(7) A person who contravenes the provisions of subsection (5) or (6) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Justification: The amendment consolidates in one section the provisions protecting persons under the age of eighteen years from tobacco and nicotine products and extends the prohibition on sale and supply to minors. The amendment also clarifies the premises considered to primarily serve persons under the age of eighteen years, to aid enforcement.

CLAUSE 19

THAT, clause 19 of the Bill be amended—

(a) by deleting the proposed new section 21A and substituting therefor the following new section—

Registration of manufacturers and importers.

21A. (1) A person shall not manufacture or import a tobacco or nicotine product unless the person is registered by the Board.

(2) The Cabinet Secretary may, on the recommendation of the Board, make regulations prescribing the conditions and manner of registration under this section.

(3) Any registration fee levied under this section shall be payable into the Fund.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three years, or to both.

(b) in the proposed new section 21B by inserting the following new subsection immediately after subsection (2)—

(3) The implementation of this section shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the regulations made under that Act on extended producer responsibility, including obligations for the take-back of device and battery waste, and any product that does not comply with subsection (1) shall be liable to seizure and destruction under this Act.

Justification: To avoid dual regulation of retailers, registration under section 21A is limited to manufacturers and importers.

The prohibition on disposable devices and packaging made with single-use plastics is retained. Its implementation is coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations, after which non-compliant stock may be seized and destroyed.

CLAUSE 22

THAT, clause 22 of the Bill be amended—

(a) in paragraph (a) in the proposed new subsection (2)—

(i) in paragraph (a) by deleting subparagraph (vi) and substituting therefor the following new subparagraph—

(vi) public service vehicles, passenger vehicles, school buses and vans, aircrafts, commuter boats, ferries and any other public conveyance;

(ii) in paragraph (b) by deleting subparagraph (viii) and substituting therefor the following new subparagraph—

(viii) passenger ships; and

(b) by deleting paragraph (b).

Justification: The Committee resolved that smoking shall be permanently prohibited on aircrafts and any other public conveyance. Paragraph (b) is deleted as a consequence of retaining the Board.

CLAUSE 23

THAT, clause 23 of the Bill be amended in the proposed new section 34A—

(a) by deleting the words "a nicotine pouch or" appearing in the introductory phrase;

(b) by deleting the words "high-concentration e-liquids" appearing in paragraph (c) and substituting therefor the words "high concentration nicotine liquids"; and

(c) by inserting the following new subsection immediately after subsection (1)—

(2) The format, size and placement of the warnings required under subsection (1) shall be as prescribed by the Cabinet Secretary in regulations.

Justification: The reference to nicotine pouches is deleted as nicotine pouches are proposed to be prohibited under the proposed section 14B.

The words "high concentration nicotine liquids" are included for clarity.

The format, size and placement of point-of-sale warnings shall be prescribed in regulations.

CLAUSE 26

THAT, clause 26 of the Bill be amended—

(a) in paragraph (a) in the proposed new subsection (1) by deleting the word "Committee" and substituting therefor the word "Board"; and

(b) in paragraph (b) in the proposed new subsection (1A) by inserting the following new paragraphs immediately after paragraph (g)—

(h) provide for age verification at physical points of sale; and

(i) provide for the manner of registration of manufacturers and importers, including a digital application portal, data-sharing, renewal of registration and publication of any suspension and revocation under the Act.

Justification: Regulations shall be made by the Cabinet Secretary on the recommendation of the Board. The Cabinet Secretary shall make regulations for age verification and registration procedures and reporting, which are implementation matters to be addressed in regulations.

NEW CLAUSE 26A

THAT, the Bill be amended by inserting the following new clause immediately after clause 26—

Transitional provisions.

26A. (1) Notwithstanding any other provision of the principal Act, a person who, immediately before the commencement of this Act, was a manufacturer, importer, exporter, distributor or retailer of any tobacco product or nicotine product shall within twelve months of commencement, comply with the requirements of the principal Act, as amended by this Act.

(2) Subsection (1) shall not apply to a product prohibited under section 14B of this Act.

(3) A reference to the Tobacco Control Act in any written law or legal document shall, upon the commencement of this Act, be construed as a reference to the Tobacco and Nicotine Control Act.

Justification: To provide a reasonable transitional period of twelve months within which persons dealing in tobacco and nicotine products regulated under the Act shall comply with the Act and the regulations, including the packaging, labelling and point-of-sale warning requirements, and to allow stock lawfully on the market before commencement to be sold or withdrawn.

The transitional period does not apply to nicotine pouches and shisha that are banned under the Act. Further, non-compliant stock remaining after the transitional period is liable to seizure and in accordance with section 46 of the Act.

The amendment also provides for references in other written laws and legal documents to the Tobacco Control Act to be read as references to the Act under its new name, the Tobacco and Nicotine Control Act.

SIGNED..... **DATE**.....19/11/2026

HON. (DR.) JAMES WAMBURA NYIKAL, CBS, MP.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

Adoption Minutes of The Committee

MINUTES OF THE 81ST SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN COMMITTEE ROOM 26TH 5TH FLOOR, BUNGE TOWER ON TUESDAY, 10TH NOVEMBER,2026, AT 10.00 AM

PRESENT

1.	The. Hon. Dr. Nyikal James Wambura, **CBS**, MP	-Chairperson
2.	The Hon. Dr. Pukose Robert, **CBS**, MP	-Member
3.	The Hon. Sunkuli Julius Lekakeny Ole, **EGH**, MP	-Member
4.	The Hon. Prof. Jaldesa Guyo Waqo, MP	-Member
5.	The Hon. Kibagendi Antoney, MP	-Member
6.	The Hon. Lenguris Pauline, MP	-Member
7.	The Hon. Oron Joshua Odongo, MP	-Member
8.	The Hon. Cynthia Muge, MP	-Member

ABSENT WITH APOLOGY

1.	The Hon. Ntwiga Patrick Munene, **EBS**, MP	-Vice Chairperson
2.	The Hon. Titus Khamala, MP	-Member
3.	The Hon. Kipngor Reuben Kiborek, MP	-Member
4.	The Hon. Wanyonyi Martin Pepela, MP	-Member
5.	The Hon. Owino Martin Peters, MP	-Member
6.	The Hon. Mathenge Duncan Maina, MP	- Member
7.	The Hon. Mary Maingi, MP	-Member

COMMITTEE SECRETARIAT

1.	Dr. Christine Sagini	- Senior Clerk Assistant
2.	Ms. Gladys Kiprotich	-Clerk Assistant II
3.	Ms. Mercy Kinyua	-Legal Counsel
4.	Ms. Mercy Ondego	- Research Officer II
5.	Ms. Mercylyn Kerubo	-Audio Officer
6.	Ms. Evelyn Wambui	- Intern

AGENDA

1. Preliminaries (Prayers, Introductions, and Communication from the Chair)
2. Adoption of the Agenda
3. **Confirmation of Previous Minutes and Matters Arising**
4. **Consideration and adoption of the report on the Tobacco Control (Amendment) Bill (Senate Bill No. 35 of 2024), sponsored by Senator Catherine Muyeka Mumma**
5. Any Other Business (AOB) and Adjournment

MIN. NO. NA/DC-H/2026/412: PRELIMINARIES/INTRODUCTION

The Chairperson called the meeting to order at thirty minutes past ten o'clock, followed by the Prayer and self-introductions.

MIN. NO. NA/DC-H/2026/413: ADOPTION OF THE AGENDA
The agenda of the meeting was formally adopted, having been proposed by the Hon. Cynthia Muge, MP, and seconded by the Hon. (Dr.) Robert Pukose, MP.

MIN. NO. NA/DC-H/2026/414: CONFIRMATION OF PREVIOUS MINUTES AND MATTERS ARISING
Consideration of this item was postponed to a later date.

MIN. NO. NA/DC-H/2026/415: CONSIDERATION AND ADOPTION OF THE REPORT ON THE TOBACCO CONTROL (AMENDMENT) BILL (SENATE BILL NO. 35 OF 202490-), SPONSORED BY SENATOR CATHERINE MUYEKA MUMMA
The Legal Counsel took the Members through the Report. Following the presentation, the Committee considered and adopted the Report.

The Report on the Tobacco Control (Amendment) Bill (Senate Bill No. 35 of 2024), sponsored by Senator Catherine Muyeka Mumma was proposed by the **Hon. Owino Martin Peters, MP** and seconded by the **Hon. Oron Joshua Odongo, MP**, as the true reflection of the Committee deliberations subject to the following observations and recommendations:

COMMITTEE OBSERVATIONS
The Committee observes that:

1. On regulation of novel nicotine products, the Bill is necessary to regulate nicotine products, Electronic Nicotine Delivery Systems (ENDS) and Electronic Non-Nicotine Delivery Systems (ENNDS), which are not currently regulated under the Tobacco Control Act, Cap. 245A, and to close the regulatory gaps that have affected the effective control of tobacco and nicotine products. However, a complete ban of all novel nicotine products may lead to an increase in illicit trade in nicotine products. Therefore, a regulated model under which ENDS are subject to limits on volume, nicotine concentration, additives, child-proofing and leakage requirements, pre-market approval, flavour restrictions and the ban on online sales, provides more effective control. Further, neither the title nor the long title of the Tobacco Control Act, Cap. 245A refers expressly to nicotine products. In addition, nicotine products approved as tobacco cessation products or other medicinal substances serve a therapeutic purpose where they are marketed and sold or prescribed exclusively for that approved purpose. Notably, shisha is currently prohibited only through the Public Health (Control of Shisha Smoking) Rules, 2017 made under the Public Health Act, Cap. 242 and which carry low penalties.

2. On the proposal for a separate risk-based or modified-risk category of products, e-cigarettes and nicotine pouches contain nicotine and cause addiction, particularly among young people, regardless of whether they are combustible or non-combustible, hence the health risks associated with the use of nicotine products exist in both categories of products.

3. Prescribing the limits on volume and nicotine concentration in statute promotes legal certainty and eases implementation and enforcement, whereas leaving these limits to be prescribed by the Kenya Bureau of Standards, the National Quality Control Laboratory or through regulations would create uncertainty for regulators and industry.

4. On the restriction on flavours and product design, appealing flavours are among the main reasons given for using e-cigarettes and nicotine pouches, particularly among young people. The restrictions under the proposed sections 14J and 15 serve as a youth-protection measure and it is notable that flavour effects and design features, such as cooling agents, sweeteners and concept descriptors, increase the attractiveness, palatability or ease of inhalation of tobacco and nicotine products. Therefore, prohibiting these product design features and additives would raise the barrier of entry into the use of tobacco and nicotine products by youth and children.

5. With regard to the governance structure under the Act, re-establishing the Tobacco Control Board as a Tobacco Control Advisory Committee would weaken the governance, accountability and enforcement structure established under the Act. The establishment of the Tobacco Control Board as a body corporate therefore provides a stronger institutional framework.

6. The Bill centralises wide discretionary powers in the Cabinet Secretary, including registration of manufacturers, importers, sellers and distributors, pre-market approvals, the power to ban products from the market and other operational and regulatory functions that would ordinarily be performed by the Board, whereas the role of the Cabinet Secretary is ordinarily limited to issuing policy guidelines and direction and making regulations.

7. As regards the Tobacco Control Fund, section 8 of the Tobacco Control Act provides for the Fund to be administered by the accounting officer of the Ministry of Health, and this limits the financial independence of the Board and ability to implement and enforce the Act effectively.

8. Section 7(4) of the Tobacco Control Act provides for the use of the Fund for research, documentation and dissemination of information on tobacco and tobacco products and for national cessation and rehabilitation programmes and the Bill further proposes treatment of chronic illnesses caused by the use of tobacco products.

9. On the solatium compensatory contribution, under the proposed section 7(2)(f) of the Act, the contribution is payable by manufacturers and importers, and the proposals to provide for timelines for declaration and payment of the levy, offences, interest and dispute resolution relate to the collection of taxes and are better addressed under the relevant tax laws.

10. With respect to the proposal to increase taxation on tobacco and nicotine products to 75%, excise duty on tobacco and nicotine products is imposed mainly under the Excise Duty Act, Cap. 472, and tax rates may only be varied through the relevant tax laws and the legislative process for tax measures under Articles 114, 209 and 210 of the Constitution.

11. On pre-approval testing, section 4(1) of the Standards Act, Cap. 496, provides that the Kenya Bureau of Standards (KEBS) is responsible for the examination and testing of commodities, including testing on behalf of the Government and at the request of the Cabinet Secretary, and hence there is no conflict between the Bill and the Standards Act or other existing laws with regard to pre-approval testing.

12. With regard to age restriction and ban on online sales, Article 260 of the Constitution and the Children Act, Cap. 141 provide that eighteen years is the age at which a person ceases to be a child, and raising the minimum age to twenty-one years for tobacco and nicotine products alone would depart from the age of majority used across the law. Further, the prohibition on online sales under the proposed section 19A is a necessary safeguard, since age cannot be reliably verified in online and remote transactions and children can readily access products ordered online.

13. Regarding the restriction on sale near premises serving persons under eighteen years, the distance of one hundred metres under the proposed new section 15(5A) is reasonable, as increasing the distance to three hundred metres would, in dense urban areas, operate as a prohibition on lawful retail in large parts of towns and cities. Further, distance restrictions complement, rather than replace controls on sale to minors and reduce the visibility of products near children.

14. With regard to packaging, labelling and health warnings, the proposed seventy-five per cent front-and-back health warnings and plain packaging in Clause 18 and the point-of-sale warnings in Clause 23 are important public health measures that apply equally to electronic nicotine delivery systems. The format, size and placement of point-of-sale warnings and other requirements on health warnings are technical matters, that are more appropriately addressed in regulations. Further, exempting duty-free retailers from packaging, labelling and product requirements would undermine the public health objectives of the Bill and create avenues for illicit trade.

15. Concerning disposable devices and single-use plastics, disposable devices made with single-use plastics are engineered for cheap uptake, concealability and repeat purchase, and they create an avoidable stream of plastic, metal, lithium-battery and nicotine waste. Comparable jurisdictions, such as the United Kingdom and Belgium, have banned single-use or disposable vapes, which supports the prohibition under the proposed section 21B of the Bill. However, the clearance of existing stock raises environmental safety concerns, which are addressed under the Sustainable Waste

Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations for device and battery waste.

16. With regard to advertising, promotion and sponsorship, Part V of the Tobacco Control Act prohibits advertising, promotion and sponsorship, and the existing definition of "advertisement" in the Act is broad and inclusive in line with Article 13 of the WHO FCTC, whereas the narrower definition proposed in the Bill would reduce the scope of the prohibition. Further, ordinary commercial dealings within the supply chain are not directed at consumers and are not restricted under section 30(1) of the Act, while section 19(1) of the Act prohibits only displays that permit a buyer to handle a product before paying for it. Additionally, guidelines for digital platforms are implementation matters, more appropriately provided for in regulations.

17. With respect to licensing and registration under the proposed new sections 20A and 21A respectively, trade licensing and public health regulation are county functions under the Fourth Schedule to the Constitution, and the procedures and timelines for issuing licences are matters for county legislation. Therefore, registration of retailers under the proposed section 21A would result in dual regulation of retailers. Additionally, the manner of registration and related administrative matters are implementation matters, more appropriately provided for in regulations.

18. With regard to transitional provisions, persons dealing in tobacco and nicotine products regulated under the Act require a reasonable period within which to comply with the new requirements. A transitional period would, however, not be appropriate for nicotine pouches and shisha, which are prohibited under the proposed legal framework.

COMMITTEE RECOMMENDATION

The Committee, having considered the Tobacco Control (Amendment) Bill (Senate Bill No. 35 of 2024), sponsored by Senator Catherine Muyeka Mumma, recommends that the House approve the Bill with the following amendments:

SCHEDULE OF AMENDMENTS

Upon considering the **Tobacco Control (Amendment) Bill, 2024 (Senate Bill No. 35 of 2024)** and submissions from stakeholders, the Committee proposes the following amendments—

NEW CLAUSE 1A

THAT, the Bill be amended by inserting the following new clause immediately after clause 1—

Amendment of section 1 of Cap. 245A.

1A. Section 1 of the Tobacco Control Act, (in this Act referred to as "the principal Act"), is amended by deleting the words "Tobacco Control Act" and substituting therefor the words "Tobacco and Nicotine Control Act".

Justification: To change the short title of the principal Act to the Tobacco and Nicotine Control Act, so that the title reflects the expanded scope of the Act, which now regulates nicotine products, including electronic nicotine delivery systems, in addition to tobacco products.

CLAUSE 2

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Amendment of the long title of Cap. 245A.

2. The long title of the principal Act is amended by inserting the words "and nicotine products, including electronic nicotine delivery systems," immediately after the words "tobacco products".

Justification: To expressly refer to nicotine products, since the Bill brings electronic nicotine delivery systems and other nicotine products within the scope of the Act.

CLAUSE 3

THAT, clause 3 of the Bill be amended—

(a) by deleting paragraph (a);

(b) in paragraph (c) by deleting the proposed new definition of "ingredients" and substituting therefor the following new definition—

"ingredients" means the substances added to tobacco products during the manufacturing process or arising from agricultural practices, including—

(i) tobacco, nicotine and chemicals used in the creation of aerosol or vapour in electronic cigarettes and related products;

(ii) components and materials used in the manufacture of those components;

(iii) additives and processing aids;

(iv) residual substances resulting from agricultural practices, storage and processing;

(v) substances that migrate from the packaging material into the product or are otherwise present in the product; and

(vi) constituents, emissions, contaminants and by-products generated during the heating, aerosolisation, storage or use of the product;

(c) by deleting paragraph (f);

(d) in paragraph (g) by deleting the proposed new definition of "smoking" and substituting therefor the following new definition—

"smoking" means inhaling or exhaling the smoke, aerosol or vapour of any tobacco or nicotine product, or of any other substance delivered through an electronic nicotine delivery system or shisha, whether or not the smoke, aerosol or vapour contains nicotine and whether or not it is visible, and includes the holding of, or control over, any ignited, heated or activated tobacco or nicotine product, electronic nicotine delivery system or shisha;

(e) in paragraph (h) by deleting the proposed new definition of "tobacco product" and substituting therefor the following new definition—

"tobacco product" means any product made or derived, wholly or partly from—

(i) tobacco, including tobacco leaf and any extract of tobacco;
(ii) nicotine from any source, including synthetic nicotine formulations; or
(iii) a nicotine analogue,

that is intended, designed or marketed to be consumed by smoking, heating, inhalation, chewing, sniffing, vaping or sucking or by any other means, and includes an electronically heated tobacco product whether or not it contains nicotine, cigarette papers, tubes and filters and any solution or liquid intended for use in such devices but does not include a nicotine product approved as a tobacco cessation product or other medicinal substance under the Pharmacy and Poisons Act where the product is marketed and sold or prescribed exclusively for that approved purpose;

(f) by deleting paragraph (i) and substituting therefore the following new paragraph—

(i) inserting the following new definitions in their proper alphabetical sequence—

"additive" means a substance, other than tobacco, that is added to a tobacco or nicotine product, unit pack or container pack during the manufacturing process or through agricultural practices;

"aerosol" means a suspension of fine solid particles or liquid droplets in the air or other gas that is generated by heating, vaporising or otherwise activating a tobacco or nicotine product, an electronic nicotine delivery system or any other substance, and which is capable of being inhaled;

"characterising flavour" means a smell, taste or other sensory effect, other than one of tobacco, before, during or after the consumption of a product, which results from an additive or a combination of additives, including fruit, spice, herbs, alcohol, candy, menthol, cooling agents, sweeteners, sweetness enhancers or related flavouring agents, and includes any descriptor, name, image or concept such as "ice", "cool", "fresh", "chill" or "smooth" that conveys a flavour or sensory effect;

"Chief Executive Officer" means the Chief Executive Officer of the Board appointed under section 5H;

"electronic cigarette" means a product that—

(a) is used for the consumption of nicotine or non-nicotine containing aerosol through a mouth piece or nasal piece, or by any other means of inhalation, or a component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether the product is for one-time use or refillable by means of a refill container and a tank or rechargeable with single use cartridges); and

(b) is not a medical product or a medical device as defined in the Pharmacy and Poisons Act;

"electronic nicotine delivery system" means an electronic device, and any associated accessories, components, or parts, that is designed, manufactured, or capable of being used to—

(a) aerosolize, vaporize, or otherwise convert a substance into an inhalable form; and

(b) deliver such aerosol, vapour, or other substance to a person through inhalation,

whether or not the substance contains nicotine, and includes but is not limited to electronic cigarettes, electronic cigars, electronic cigarillos, electronic hookahs, vape pens, vape pods, and similar devices, regardless of their shape, size, or appearance;

"flavouring agent" means an additive or a combination of additives, including a cooling agent, sweetener or sweetness enhancer, that imparts or enhances a smell, taste or other sensory effect other than that of tobacco;

"institution of basic education and training" has the meaning assigned to it under the Basic Education Act;

"nicotine analogue" means any substance, whether natural or synthetic, that is chemically or structurally similar to nicotine, or that is designed to produce or produces pharmacological effects similar to those of nicotine when consumed;

"nicotine pouch" means a pouch that contains nicotine, nicotine analogues, flavourings, sweeteners or plant based fibres derived from tobacco plant or synthetic nicotine;

"nicotine product" means a product containing nicotine but does not include a product containing nicotine that has been approved as a tobacco cessation product or other medicinal substance: Provided that the product is marketed and sold or prescribed exclusively for that approved purpose;

"tobacco smoke" means—

(a) smoke, fumes, gases, or particulate matter produced by the burning, heating, or combustion of tobacco or any tobacco or nicotine product; or

(b) aerosol, vapour, or emissions produced by the use of an electronic delivery system,

and includes any combination thereof, whether visible or invisible, that is released into the air and capable of being inhaled by persons in the vicinity;

"plain packaging" means the packaging of a tobacco product, including the unit pack and any outer packaging, from which logos, colours, brand

images and promotional information are removed or restricted, other than the brand and variant names displayed in a standard colour and font style, as may be prescribed;

"principal display area" means the front and back surfaces of the unit pack or outer packaging of a tobacco product that are most likely to be displayed or visible to a consumer at the point of sale or during use;

"shisha" means any tobacco product that may be flavoured or non-flavoured and may contain molasses, honey, vegetable glycerol or any other natural or artificial flavor or any other substance, whether or not it contains nicotine, that is intended to be heated and smoked or inhaled through a water pipe, hookah or similar apparatus, and includes the water pipe, hookah or apparatus used for that purpose;

"shisha smoking" means the consumption of shisha using a single or multi-stemmed smoking instrument where the smoke is designed to pass through water or other liquid before reaching the smoker;

"smokeless tobacco product" means a product that is entirely or partly made of the leaf tobacco, as raw material and is consumed through chewing, sucking, sniffing or any other means of oral consumption; and

"unit pack" means the smallest individual packaging in which a tobacco or nicotine product or related product is, or is intended to be, presented for retail sale.

Justification: The amendment to paragraph (a) retains the definition of "Board" in the principal Act, consistent with the Committee's resolution to retain the Tobacco Control Board.

The existing broad definition of "advertisement" in the Act is retained and the narrower definition in the Bill is deleted.

The definition of "ingredients" is expanded to capture emissions, contaminants and by-products generated during heating, aerosolisation, storage or use, so that disclosure and testing obligations cover what the user is actually exposed to.

The definition of "smoking" is made technology-neutral to prevent evasion of smoke-free requirements through re-labelling of products as nicotine-free or herbal. Nicotine products approved as cessation products or other medicinal substances and sold exclusively for that purpose are excluded from the definition of "tobacco product" and "nicotine product".

The definition of "characterising flavour" deletes the vague words "clearly noticeable" and extends to cooling agents, sweetness enhancers and descriptors so that the prohibition in section 14J cannot be defeated by reformulation.

The new definitions of "aerosol", "flavouring agent", "nicotine analogue", "plain packaging", "principal display area" and "shisha" clarify terms used in the Bill and give effect to section 14J and Clauses 18 and 23.

The definition of "electronic cigarette" is extended to inhalation through the nose, and shisha is expressly included in the definition of "electronic nicotine delivery system" for clarity of implementation and enforcement.

The definition of "Committee" is deleted as a consequence of retaining the Board.

CLAUSE 4

THAT, the Bill be amended by deleting clause 4.

Justification: Paragraphs (a) and (b) of clause 4 are consequential amendments that would replace references to the "Board" with the "Committee", which are no longer necessary as the Board is retained.

The power in paragraph (c) to prohibit the manufacture, sale, distribution or importation of a non-compliant tobacco product is an operational function. The Committee resolved that this power be conferred on the Board, and it is provided for under the proposed amendment to section 6 in clause 6.

CLAUSE 5

THAT, the Bill be amended by deleting clause 5 and substituting therefor the following new clause—

Amendment of section 5 of Cap. 245A.

5. The principal Act is amended by deleting section 5 and substituting therefor the following new sections—

Establishment of the Board.

5. (1) There is established the Tobacco Control Board which shall be a body corporate with perpetual succession and a common seal.

(2) The Board shall be capable in its corporate name of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property;

(c) entering into contract; and

(d) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

Membership of the Board.

5A. (1) The Board shall comprise—

(a) a chairperson appointed by the Cabinet Secretary;

(b) the Principal Secretary responsible for matters relating to public health or a designated representative;

(c) the Principal Secretary for the National Treasury or a designated representative;

(d) the Director-General for health or a designated representative;

(e) the County Executive Committee Member responsible for health nominated by the Council of County Governors or a designated representative;

(f) one person with special expertise on matters relating to tobacco control, nominated by the Council of County Governors;

(g) one person representing the Kenya business community, nominated by the Kenya National

Chamber of Commerce and Industry;

(h) one person nominated by the Kenya Medical Association;

(i) one person with special expertise on matters relating to tobacco control nominated by the Public Benefit Organizations Regulatory Authority;

(j) the chief executive officer of the National Youth Council or a designated representative;

(k) the Chief Executive Officer of the National Authority for the Campaign Against Alcohol and Drug Abuse; and

(l) the Chief Executive Officer, who shall an *ex-officio* member and the secretary to the Board and shall have no right to vote.

(2) The members of the Board, other than the *ex-officio* members, shall be appointed by the Cabinet Secretary, by notice in the *Gazette*.

Disqualification from appointment.

5B. (1) A person shall not be appointed as a member of the Board if that person—

(a) is an employee, agent or representative of a person, company or association engaged in the manufacture, sale or distribution of tobacco or tobacco products;

(b) has any direct or indirect pecuniary interest in the tobacco industry; or

No.11 of 2025.

(c) has contravened the Conflict of Interest Act.

(2) Every member of the Board shall, upon appointment and annually thereafter, make a written declaration of any affiliation with, or interest in, the tobacco industry or its subsidiaries in the manner prescribed.

(3) A member of the Board who fails to disclose his or her affiliation to the tobacco industry or its subsidiary commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.

Qualifications of the chairperson and members.

5C. (1) A person is qualified for appointment as the chairperson of the Board if the person—

(a) holds a bachelor's degree from a university recognised in Kenya;

(b) has at least ten years of experience in public health, five of which shall be at a senior management level; and

(c) meets the requirements of Chapter Six of the Constitution.

(2) A person is qualified for appointment as a member of the Board under section 5A(1)(e), (f), (g), (h) or (i) if the person—

(a) holds a bachelor's degree from a university recognised in Kenya;

(b) has at least ten years of experience in public health, law, economics, trade or tobacco control, five of which shall be at a senior management level; and

(c) meets the requirements of Chapter Six of the Constitution.

Tenure of office.

5D. (1) The chairperson shall hold office for a term of three years and shall be eligible for re-

appointment for one further term of three years.

(2) The members of the Board referred to in section 5A(1) (f), (g), (h) and (i) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

Power to co-opt.

5E. The Board may invite any person who is not affiliated to the tobacco industry to attend a meeting of the Board for the purpose of assisting or advising the Board on any particular matter, but such person shall have no right to vote at the meeting.

Procedures of the Board.

5F. (1) Subject to this Act, the Board may regulate its own procedure.

Expenses and remuneration.

5G. (1) The expenses of the Board shall be defrayed out of—

(a) not more than three per cent of the revenue projected to be received into the Fund under section 7 in any financial year; and

(b) monies appropriated by the National Assembly for that purpose.

(2) The chairperson and members of the Board shall be paid such allowances as may be advised by the Salaries and Remuneration Commission.

Chief Executive Officer.

5H. (1) There shall be a Chief Executive Officer of the Board who shall be competitively recruited and appointed by the Board on such terms and conditions of service as the Board may determine.

(2) A person is qualified for appointment as the Chief Executive Officer if the person—

(a) holds a bachelor's degree from a university recognised in Kenya;

(b) has at least ten years of experience in public health or tobacco control, five of which shall be at a senior management level; and

(c) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(4) The Chief Executive Officer shall be responsible for the day-to-day management of the affairs of the Board and shall administer the Fund in accordance

with section 8.

Staff of the Board.

51. The Board may appoint such officers and staff as may be necessary for the proper performance of its functions under this Act.

Justification: The Committee observed that re-establishing the Tobacco Control Board as a Tobacco Control Advisory Committee would weaken the governance, accountability and enforcement structure established under the Act.

The amendment retains and strengthens the Board as a body corporate with the membership proposed in the Bill, but with the County Executive Committee Member responsible for health, nominated by the Council of County Governors and the CEO-NACADA sitting on the Board. The Bill further retains the conflict-of-interest safeguards in section 5B and adds a requirement for declarations of interest.

The Bill also provides qualifications for members similar to those of the chairperson and limits the tenure of the chairperson to two terms of three years each.

The Cabinet Secretary's role is limited to issuing policy guidelines and directions and making Regulations under section 53 of the Act.

The expenses of the Board are met from not more than three per cent of the projected revenue of the Fund and from monies appropriated by the National Assembly, which gives the Board a secure source of funding while keeping most of the Fund available for its statutory purposes.

The amendment further provides for a Chief Executive Officer to manage the Board and administer the Fund.

CLAUSE 6

THAT, the Bill be amended by deleting clause 6 and substituting therefor the following new clause—

Amendment of section 6 of Cap. 245A.

6. Section 6 of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (d)—

(da) consider and determine applications for the approval of tobacco and nicotine products under sections 14C, 14E, 14F, 14G and 14H;

(db) register manufacturers and importers of tobacco and nicotine products under section 21A;

(dc) prohibit the manufacture, sale, distribution or importation of a tobacco or nicotine product that does not comply with the provisions of this Act;

(dd) determine, in a transparent manner, the solatium compensatory contribution payable under section 7(2)(f);

(de) maintain and publish the registers of approved and banned tobacco and nicotine products and of registered manufacturers and importers;

(df) monitor and enforce compliance with this Act in collaboration with county governments and other relevant agencies;

Justification: The amendment retains the Tobacco Control Board by deleting refernces to the Tobacco Control Advisory Committee.

The Bill centralises in the Cabinet Secretary operational and regulatory functions that would ordinarily be performed by the Board, including product approvals, registration, banning of products and the determination of the solatium compensatory contribution. The amendment assigns these functions to the Board, including the power to prohibit dealing in tobacco products that do not comply with the Act.

CLAUSE 7

THAT, the Bill be amended by deleting clause 7 and substituting therefor the following new Clause—

Amendment of section 7 of Cap. 245A.

7. Section 7 of the principal Act is amended—

(a) in subsection (2) by deleting paragraph (f) and substituting therefor the following new paragraph—

(f) a solatium compensatory contribution payable by any licensed tobacco or nicotine product manufacturers or importers in the country as

may be determined by the Board; and

(b) in subsection 4 by inserting the following new paragraphs immediately after paragraph (a)—

(aa) treatment of chronic illnesses caused by the use of tobacco products; and

(ab) the expenses of the Board under section 5G;

(c) by inserting the following new subsection immediately after subsection (4)—

(4A) The Board shall, at the end of every financial year, publish in the *Gazette* and on its website the rate of the solatium compensatory contribution determined under subsection (2)(f), the amounts collected into the Fund and the expenditure from the Fund during that financial year

Justification: The Committee resolved to retain the determination of the solatium compensatory contribution by the Board, subject to a requirement that the rate be determined transparently and that collections into, and expenditure from, the Fund be published annually.

The amendment to subsection (4) allows the expenses of the Board to be met from the Fund within the cap of three per cent of projected revenue under the proposed section 5G.

CLAUSE 8

THAT, the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Amendment of section 8 of Cap. 245A.

8. Section 8 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) The Fund shall be administered by the Chief Executive Officer of the Board, who shall be the Officer administering the Fund, in accordance with this Act, the Public Finance Management Act and any other written law.

(b) in subsection (3), by inserting the following new paragraph immediately after paragraph (d)—

(da) publish an annual report on the research activities and programmes undertaken, including the research findings and impact of the programmes.

Justification: In order to strengthen the Board to be able to implement and enforce the Act, the Fund shall be administered by the Chief Executive Officer of the Board, rather than the accounting officer of the Ministry responsible for health, in accordance with the Act, the Public Finance Management Act, Cap. 412A and other applicable laws.

CLAUSE 12

THAT, clause 12 of the Bill be amended—

(a) in the proposed new section 14A—

(i) in subsection (1) by deleting the expression "14F" appearing in paragraph (c) and substituting therefor the expression "14J";

(ii) by inserting the following new subsection immediately after subsection (1)—

(1A) A refill container shall comply with the packaging, labelling and health warning requirements under sections 21 and 34A.

(b) by deleting the proposed new section 14B and substituting therefor the following new section—

Prohibition of nicotine pouches and shisha.

14B. (1) Notwithstanding any other provision of this Act, a person shall not manufacture, import, sell, offer for sale, use, advertise, promote, distribute or in any other way deal in—

(a) nicotine pouches; or

(b) shisha.

(2) A person shall not allow, promote, facilitate or encourage or do anything to allow, promote, facilitate or encourage the smoking of shisha or the use of nicotine pouches in Kenya.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.

(c) in the proposed new section 14C by deleting the words "Cabinet Secretary" appearing in subsection (1) and substituting therefor the word "Board";

(d) in the proposed new section 14 D—

(i) by deleting subsection (2) and substituting therefor the following new subsection—

(2) Where the Board considers that the information submitted under this section is incomplete, the Board may request the manufacturer or importer to provide such further information as may be necessary for the determination of the application.

(ii) by deleting the subsection (3);

(e) in the proposed new section 14E—

(i) by deleting the words "Cabinet Secretary" appearing in subsection (2) and substituting therefor the word "Board"; and

(ii) by inserting the following new subsection immediately after subsection (2)—

(3) The cost of testing the samples under subsection (2) shall be borne by the manufacturer or importer.

(f) by deleting the proposed new section 14F and substituting therefor the following new section—

Decision on request for approval.

14F. (1) The Board shall communicate, in writing, the decision made within ninety days of a request for approval of a product being made.

(2) Where the Board declines to approve a product, it shall notify the applicant in writing of the decision and the reasons for the decision.

(3) Where the Board declines to approve a product for which approval has been sought, the manufacturer or

importer shall—

(a) immediately take the corrective action necessary to bring the product into conformity with the Act if the product is an existing product;

(b) withdraw the product from the market; or

(c) recall the product.

(g) in the proposed new section 14G by deleting the words "Cabinet Secretary" appearing in subsection (1) and substituting therefor the word "Board";

(h) in the proposed new section 14H by deleting the words "Cabinet Secretary" and substituting therefor the word "Board";

(i) by deleting the proposed new section 14I and substituting therefor the following new section—

Register of approved and banned products.

14I. (1) The Board shall maintain an up-to-date register of—

(a) products that have been approved or banned from sale;

(b) the name of the authorised manufacturer or importer of each product;

(c) the date on which each product was approved or banned; and

(d) the duration and validity date of each approval.

(2) The Board shall publish the register in the *Gazette* and on the websites of the Board and the Ministry responsible for health, and shall keep the register up to date and accessible to the public.

(j) in the proposed new section 14J (1) by inserting the following new paragraphs immediately after paragraph (f)—

(g) flavouring agents, including cooling agents, sweeteners or sweetness enhancers, that increase the attractiveness, palatability or ease of inhalation of the product; or

(h) design features, including flavour capsules, or concept descriptors that convey a flavour or sensory effect or that increase the attractiveness of the product.

Justification: The cross-reference in section 14A(1)(c) is corrected to refer to section 14J, which specifies the prohibited additives, and refill containers are required to comply with the packaging and warning requirements in sections 21 and 34A.

The Committee resolved to ban nicotine pouches and shisha while regulating other nicotine products, noting that a complete ban on all novel nicotine products would lead to an increase in illicit trade. Shisha is currently prohibited only through regulations under the Public Health Act, Cap. 242, which carry low penalties, so the prohibition is placed in the Act with a penalty aligned to the other offences in the Bill.

The powers of approval, testing, banning and publication of products are assigned to the Board, and the powers of the Cabinet Secretary limited to policy direction. The amendments further require the manufacturer or importer to bear the cost of testing, require written reasons for refusal decisions, and require the register of approved and banned products to be published in the Gazette and online.

The proposed new section 14D(3) is deleted as its provisions are anti-competitive.

Section 14J is strengthened as a youth-protection measure by extending it to flavour effects, design features and concept descriptors across all tobacco and nicotine products.

CLAUSE 13

THAT, the Bill be amended by deleting clause 13 and substituting therefor the following new clause—

Amendment of section 15 of Cap. 245A.

15. The principal Act is amended by deleting section 15 and substituting therefor the following new section—

Supply to and by children.

15. (1) No person shall—

(a) sell or supply a tobacco product or nicotine product to a child; or

(b) purchase a tobacco product or nicotine product from a child.

(2) Subject to subsection (3), a person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

(3) Notwithstanding the provisions of subsection (1), it shall be a defence to an offence under this section if it is established that the accused person attempted to verify that the child was at least eighteen years of age by asking for and being shown any of the documents specified in subsection (4) for the purpose of verifying the age of the child and believed, on reasonable grounds, that the documentation was authentic.

(4) For the purposes of this section, the following documentation may be used to verify a person's age—

(a) a national identity card issued by the Republic of Kenya;

(b) a driving licence issued by the Republic of Kenya or any other country;

(c) a passport issued by the Republic of Kenya or any other country; or

(d) any other documentation as the Cabinet Secretary may prescribe.

(5) No person shall manufacture, import or sell —

(a) objects including sweets, snacks, toys, cartoon characters, popular youth motifs, or other similar objects that would reasonably appeal to persons under the age of eighteen years in designs that resemble tobacco or nicotine products; or

(b) any tobacco or nicotine product in designs that imitate sweets, snacks, toys, cartoon characters, popular youth motifs, or other similar objects that would reasonably appeal to persons under the age of eighteen years.

(6) No person shall sell a tobacco or nicotine product within a radius of one hundred metres from an institution of basic education and training, a children home, a child care facility, a children playground or any

other place primarily serving persons under the age of eighteen years.

(7) A person who contravenes the provisions of subsection (5) or (6) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Justification: The amendment consolidates in one section the provisions protecting persons under the age of eighteen years from tobacco and nicotine products and extends the prohibition on sale and supply to minors. The amendment also clarifies the premises considered to primarily serve persons under the age of eighteen years, to aid enforcement.

CLAUSE 19

THAT, clause 19 of the Bill be amended—

(a) by deleting the proposed new section 21A and substituting therefor the following new section—

Registration of manufacturers and importers.

21A. (1) A person shall not manufacture or import a tobacco or nicotine product unless the person is registered by the Board.

(2) The Cabinet Secretary may, on the recommendation of the Board, make regulations prescribing the conditions and manner of registration under this section.

(3) Any registration fee levied under this section shall be payable into the Fund.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three years, or to both.

(b) in the proposed new section 21B by inserting the following new subsection immediately after subsection (2)—

(3) The implementation of this section shall be coordinated with the Sustainable Waste Management Act, Cap. 387C and the regulations made under that Act on extended producer responsibility, including obligations for the take-back of device and battery waste, and any product that does not comply with subsection (1) shall be liable to seizure and destruction under this Act.

Justification: To avoid dual regulation of retailers, registration under section 21A is limited to manufacturers and importers.

The prohibition on disposable devices and packaging made with single-use plastics is retained. Its implementation is coordinated with the Sustainable Waste Management Act, Cap. 387C and the Extended Producer Responsibility Regulations, 2024, including take-back obligations, after which non-compliant stock may be seized and destroyed.

CLAUSE 22

THAT, clause 22 of the Bill be amended—

(a) in paragraph (a) in the proposed new subsection (2)—

(i) in paragraph (a) by deleting subparagraph (vi) and substituting therefor the following new subparagraph—

(vi) public service vehicles, passenger vehicles, school buses and vans, aircrafts, commuter boats, ferries and any other public conveyance;

(ii) in paragraph (b) by deleting subparagraph (viii) and substituting therefor the following new subparagraph—

(viii) passenger ships; and

(b) by deleting paragraph (b).

Justification: The Committee resolved that smoking shall be permanently prohibited on aircrafts and any other public conveyance. Paragraph (b) is deleted as a consequence of retaining the Board.

CLAUSE 23

THAT, clause 23 of the Bill be amended in the proposed new section 34A—

(a) by deleting the words "a nicotine pouch or" appearing in the introductory phrase;

(b) by deleting the words "high-concentration e-liquids" appearing in paragraph (c) and substituting therefor the words "high concentration nicotine liquids"; and

(c) by inserting the following new subsection immediately after subsection (1)—

(2) The format, size and placement of the warnings required under subsection (1) shall be as prescribed by the Cabinet Secretary in regulations.

Justification: The reference to nicotine pouches is deleted as nicotine pouches are proposed to be prohibited under the proposed section 14B.

The words "high concentration nicotine liquids" are included for clarity.

The format, size and placement of point-of-sale warnings shall be prescribed in regulations.

CLAUSE 26

THAT, clause 26 of the Bill be amended—

(a) in paragraph (a) in the proposed new subsection (1) by deleting the word "Committee" and substituting therefor the word "Board"; and

(b) in paragraph (b) in the proposed new subsection (1A) by inserting the following new paragraphs immediately after paragraph (g)—

(h) provide for age verification at physical points of sale; and

(i) provide for the manner of registration of manufacturers and importers, including a digital application portal, data-sharing,

renewal of registration and publication of any suspension and revocation under the Act.

Justification: Regulations shall be made by the Cabinet Secretary on the recommendation of the Board. The Cabinet Secretary shall make regulations for age verification and registration procedures and reporting, which are implementation matters to be addressed in regulations.

NEW CLAUSE 26A

THAT, the Bill be amended by inserting the following new clause immediately after clause 26—

Transitional provisions.

26A. (1) Notwithstanding any other provision of the principal Act, a person who, immediately before the commencement of this Act, was a manufacturer, importer, exporter, distributor or retailer of any tobacco product or nicotine product shall within twelve months of commencement, comply with the requirements of the principal Act, as amended by this Act.

(2) Subsection (1) shall not apply to a product prohibited under section 14B of this Act.

(3) A reference to the Tobacco Control Act in any written law or legal document shall, upon the commencement of this Act, be construed as a reference to the Tobacco and Nicotine Control Act.

Justification: To provide a reasonable transitional period of twelve months within which persons dealing in tobacco and nicotine products regulated under the Act shall comply with the Act and the regulations, including the packaging, labelling and point-of-sale warning requirements, and to allow stock lawfully on the market before commencement to be sold or withdrawn.

The transitional period does not apply to nicotine pouches and shisha that are banned under the Act. Further, non-compliant stock remaining after the transitional period is liable to seizure and in accordance with section 46 of the Act.

The amendment also provides for references in other written laws and legal documents to the Tobacco Control Act to be read as references to the Act under its new name, the Tobacco and Nicotine Control Act.

MIN. NO. NA/DC-H/2026/416: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business, the meeting was adjourned at ten minutes past one o'clock. The next meeting will be held by notice.

Sign..... **Date**..10/11/2026.....

HON. DR. NYIKAL JAMES WAMBURA, CBS, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

Report Adoption Schedule

THE NATIONAL ASSEMBLY

13TH PARLIAMENT – FIFTH SESSION (2026)

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON HEALTH

ADOPTION SCHEDULE

REPORT ON THE TOBACCO CONTROL (AMENDMENT) BILL 2024 (SENATE BILL NO. 35 OF 2024) BY SENATOR CATHERINE MUYEKA MUMMA 2024)

We, the undersigned Members of the Departmental Committee on Health do hereby append our signatures to adopt this Report **Date:** 10th November, 2026

NO	NAME	SIGNATURE
1.	The Hon. Dr. Nyikal James Wambura, M.P- **Chairperson**	
2.	The Hon. Ntwiga Patrick Munene, EBS, MP **-Vice-Chairperson.**	
3.	The Hon. Dr. Pukose Robert,**CBS**, M.P	
4.	The Hon. Titus Khamala, M.P	
5.	The Hon. Sunkuli Julius Lekakeny Ole, **EGH, EBS**,M.P.	
6.	The Hon. Prof. Jaldesa Guyo Waqo, M.P.	
7.	The Hon. Owino Martin Peters, M.P.	
8.	The Hon. Wanyonyi Martin Pepela, M.P	
9.	The Hon. Lenguris Pauline, M.P	
10.	The Hon. Mary Maingi, MP	
11.	The Hon. Muge Cynthia Jepkosgei, M.P	
12.	The Hon. Oron Joshua Odongo, M.P.	
13.	The Hon. Kibagendi Antony, M.P.	
14.	The Hon. Mathenge Duncan Maina, M.P	
15.	The Hon. Kipngor Reuben Kiborek, M.P	