

A Consumer Protection Perspective Commentary of Taiwan Tobacco Hazards Prevention Act Amendment

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Abstract

The Government should take responsibility to protect citizens' health and take appropriate measures to prevent the health problem. For smoking products, the most effective measure is through the law to control. Regulatory agencies should also obtain a balance among the interests of all parties and endeavor to protect consumers' rights and interests. This study uses Consumer Protection Perspective to analyze Taiwan Tobacco Hazards Prevention Act Amendment, to avoid the consumers from the infringement of these products, and to help the government improve its future strategies on the tobacco industry. The study suggests that government should modify the regulations and implement more strict policies, also provides appropriate education to students, which is beneficial to ensure the health and interests of nationals.

Keywords: Tobacco hazards prevention act; Consumer protection; Tobacco control

Abbreviations: WHO: World Health Organization; FCTC: Framework Convention on Tobacco Control; THPA: Tobacco Hazards Prevention Act; CPC: Consumer Protection Committee; DCP: Department of Consumer Protection.

Introduction

For the purpose of tobacco control, World Health Organization (WHO) Member States co-signed the WHO Framework Convention on Tobacco Control (WHO FCTC). It is the pre-eminent global tobacco control instrument, containing legally binding obligations for its Parties,

setting the foundation for reducing both demand for and supply of tobacco products and providing a comprehensive direction for tobacco control policy at all levels [1]. To meet the Convention and to make up for the lack of Taiwan Tobacco Hazards Prevention Act, The Taiwan Executive Yuan has passed the Tobacco Hazards Prevention Act (THPA) Amendment at the end of 2017. The aim of this revision is to make supplements for the inadequacies of the old law. In particular, there are some restrictions on the tobacco products to catch up with the legislative trend of advanced countries in the world.

The legislation system may differ due to differences in national conditions and culture. In terms of applicable subject, some countries use the adult age as the boundary for the use of tobacco products; some countries reduced to the high school age group. In addition, in the use of space control, countries around the world have also adopted different standards. Some countries take highly stringent standards, prohibit tobacco use in public areas; some countries make the prohibition on using it on public transportation.

For the newly developed e-cigarette products, Taiwan Tobacco Hazards Prevention Act has not clearly set its restrictions. The government should take responsibility for protecting the citizens' health, and the authorities should include e-cigarettes in the THPA to prevent future health issues [2]. To achieve the regulatory effect, it can only use the purposeful expansion of legal methodology to make up for the loopholes in the existing legal system at present.

Through amendments to the Tobacco Hazards Prevention Act, it is not necessary to indirectly achieve the goal through the above-mentioned legal methodology, and it can be directly incorporated into the legal norms. Strong laws are essential in the fight against tobacco use [3]. However, the control of cigarettes and other products is almost always a matter of government, consumers, and industry. From the perspective of consumer protection, consumer health is better than the freedom of tobacco business operators. Through the laws and proper control policies, the purpose of safeguarding national health can be achieved.

This study not only introduces the legislative deficiencies of the current law in Taiwan, but also analyzes the key points of the amendment through the perspective of consumer protection, and how such amendments may lead to impacts, and finally provides recommendations for this study. The study suggests that government should modify the regulations and implement more strict policies, also provides appropriate school education to students, which is beneficial to ensure the health and interests of nationals.

Taiwan Tobacco Hazards Prevention Act and Amendment

The strengthening of Tobacco Hazards Prevention Act is a pressing task worldwide. The amendment draft to the Tobacco Hazards Prevention Act proposed by the Health Promotion Administration aims to strengthen the Tobacco Hazards Prevention Act strategies, respond to

hazards posed by innovative products, protect national health, and helps achieve multiple goals associated with global sustainable development. The Tobacco Hazards Prevention Act in Taiwan was implemented on September 19, 1997. The Act is enacted to prevent and control the hazards of tobacco in order to protect the health of the Taiwanese. In Taiwan, smoking kills 27,000 people annually. On average one die from smoking-related diseases every 20 minutes. Cancer is the leading cause of death among smokers followed by cardiovascular diseases and respiratory diseases, accounting for 47.5%, 28%, and 24.5%, respectively. Smoking, therefore, exacts a huge toll on individuals, families, and society. Six of the top ten leading causes of death (malignant tumors, heart disease, cerebrovascular disease, diabetes, pneumonia, chronic lower respiratory disease) are directly related to smoking, while the remaining four causes (nephritis, nephrotic syndrome and nephrosis, chronic liver disease, cirrhosis and liver cancer, accident injuries, and suicide) are indirectly related to smoking. The economic cost of smoking amounts to NT\$ 185.8 billion (direct national health expenditures of NT\$ 65 billion and indirect loss of productivity of NT\$ 120.9 billion), accounting for 1.15% of the GDP [4].

Aiming to protect the health of citizens, it is necessary to amend Tobacco Hazards Prevention Act. The last amendment of the Tobacco Hazards Prevention Act dates back to 2009. The protection of the health of our citizens and creation of smoke-free environments brooks no delay. The Health Promotion Administration incorporates international experiences and research results as well as opinions of political parties, NGOs, and experts in its campaign to amend the Tobacco Hazards Prevention Act encompassing increased size of warning signs, bans on scented cigarettes, bans on tobacco industry sponsorship, expansion of smoke-free areas, and strengthened controls of e-cigarettes. The goal is to promote joint efforts by all citizens in the prevention of tobacco hazards, create an anti-smoking alliance, and promote health for all.

In Taiwan, after the revision of the law, it must pass the third reading of the legislature. Unless there is a special reason for this process, it will usually be dragged on by political parties for a long time. In addition, related businesses will also lobby legislators to support or hinder the bill. Therefore, before the amendment draft is passed, the relevant information such as the revision direction should be as open as possible. In particular, consumers should be aware of the government's practices in tobacco control and should not be affected by industry information.

With reference to the World Health Organization Framework Convention on Tobacco Control and international trends, the amendment draft strengthens the management of e-cigarettes and flavoured tobacco to ensure that Taiwanese people are free from the dangers of second-hand smoke in indoor public places. Taiwan government hopes to build a smoke-free living environment and safeguard the health of the people. The Department of Health and Welfare has actively communicated and coordinated with the legislative and political parties of the Legislative Yuan and completed the revision process as soon as possible.

The main points of the draft amendment are as follows:

1. Adding the definition of e-cigarettes, and modify the definition of smoking and smoking containers. (Amendment Clause 2)
2. Amend the ratio of health warnings and graphics for smoking containers should be revised to account for more than 85% of the main visible area. (Amendment Clause 6)
3. Adding the new regulations prohibiting flavored tobacco products. (Amendment Clause 7)
4. Adding the Central Competent Authority may require the operator to provide the original inspection record or other relevant information of the tobacco product, and the industry shall not evade, obstruct or reject it. (Amendment Clause 8)
5. Adding advertisements in a manner that prohibits sponsoring any activity in the name of cigarette sponsors or tobacco dealers. (Amendment Clause 9)
6. Adding no one shall supply electronic cigarettes, parts and components dedicated to electronic cigarettes, substances or liquids available for use in electronic cigarettes to persons under the age of 18. (Amendment Clause 13)
7. Adding prohibitions on the manufacture, import, sale or display of other articles that are prohibited by the government announcement, and shall not manufacture, import, sell, display, or advertise electronic cigarettes, parts and components of electronic cigarettes, materials or liquids that can be used in electronic cigarettes, except for those who have obtained drug licenses or medical device licenses according to law. (Amendment Clause 14)
8. Deletion regulation of semi-outdoor open-space dining establishments, cigar halls, and audio-visual singing venues those are open to business after 21:00 which are not subject to smoking restrictions. Adding smoking prohibition in bars and nightclubs those are not equipped with independent air-conditioner and in indoor separate smokers' rooms. (Amendment Clause 15)
9. Adding regulation of persons who have been harmed by

discouraging smoking or refusing to supply tobacco products, they may be given necessary legal and medical assistance. (Amendment Clause 18)

10. Adding regulation of the obligations of the person-in-charge, manager, or employee of the venue shall cooperate with the competent authority of the municipality, county (city) performing the inspection of the smoking ban and smoking area. (Amendment Clause 19)
11. To adjust and distinguish the type and amount of the penalty depends on the situations of the law-violation, according to the system of laws and regulations. (Amendments 23 to 35)
12. Adding the number of fines, and part of the fine as a bonus. (Amendment Clause 36)

The previous amendment was in 2009, and the relevant penalties for violations were aggravated [5]. This 2017 revision is more extensive than the scope of the last revision of the law in 2009. In addition to the new regulation on electronic cigarettes, it also involves the management of tobacco merchants, especially regarding restrictions on consumer marketing and advertising. The aim is to protect the rights of consumers.

Consumer Protection

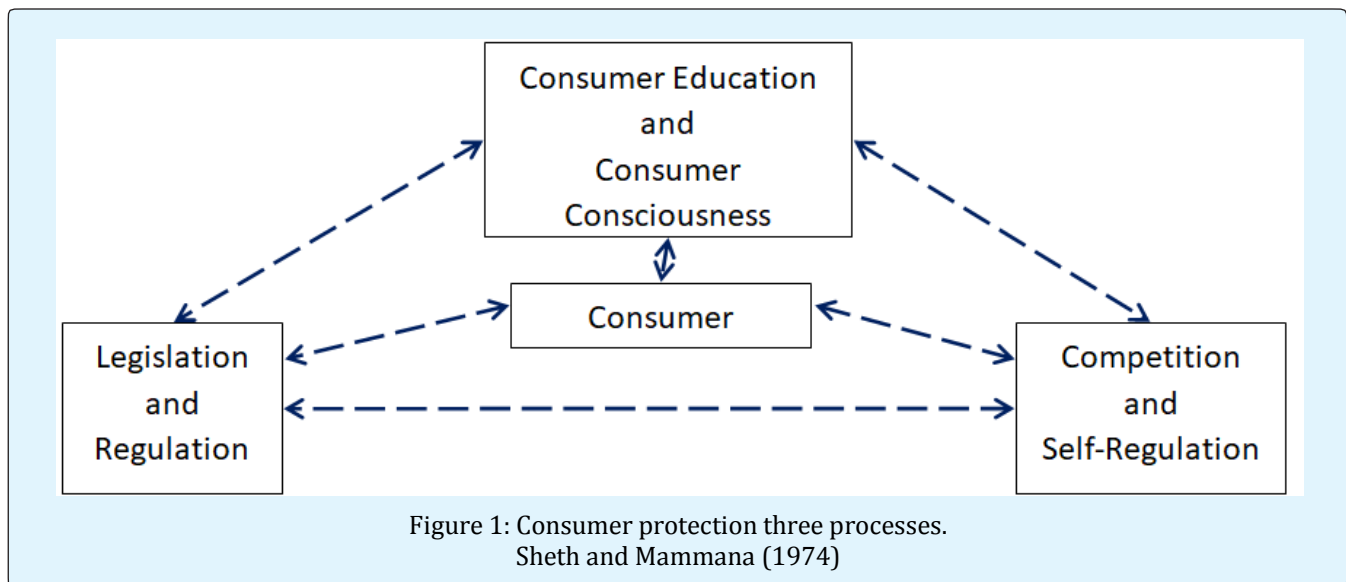
Scanning the current literature, the analysis of Tobacco Hazards Prevention Act from the point of view of consumer protection is not enough. In fact, the most effective way to manage the healthcare industry is legislation and jurisdiction. For example, The Office of the Attorney General of Texas has investigative and/or enforcement authority in health-care products, including deceptive or misleading advertising of drugs, procedures, treatments and health-related equipment [6]. Smith traces the 1997 Advisory Commission Report on Consumer Protection and Quality in the Health Care Industry and Consumer Bill of Rights, arguing the congressional activity could accelerate and take the form of managed care patient protections and ultimately managed care reform [7].

Consumer protection lies in the well-legalized environment. The Government should take the responsibility for the market order. The quality of health care product is a critical issue for the consumer. If the product is not good enough even dangerous, the government should forbid the product when it entering the market in the early time, not playing armchair quarterback. From the consumer protection point of view, do something earlier is better than later.

The success of a business depends on consumers. It is the primary duty of a business to satisfy the consumers by providing quality goods and services at the right place, right time, in the right quantity at a fair price. But sometimes in order to maximize profits, the businessmen may exploit customers by adopting various kinds of unfair and restrictive trade practices which may be detrimental to the interest of consumers who form an important part of society [8]. Thus, consumer protection mechanism is necessary for both business and consumer parties.

Consumerism is generally considered to include some form of protection to people against (1) physical threat to life, health, and property; (2) economic threat to rational and satisfying consumption benefit as a result of market imperfections, abuses, fraud, and deception; and (3)

threat from other consumers in the process of collective consumption in the modern technological mass consumption society. Similarly, most researchers and practitioners in consumerism believe that there are three distinct processes with identifiable entities that should safeguard consumer interest. They are: (1) the government through the process of legislation and regulation; (2) the business through the process of free competition and industry-wide self-regulation, and (3) the consumer activists through the process of consumer education and consumer consciousness of their rights in the marketplace [9]. The chart below can show these three distinct processes that Sheth and Mammana emphasized. These three processes should safeguard consumer interests.



In America, people attention has been focused on consumer protection issues in the industry, business, and other areas of our life [10]. When parliament seeks to protect the consumer from injury which he or she might suffer as a result of unfair trade practices, it frequently does so by imposing the penalties. American Consumer Bill of Rights addresses explicit consumer rights and cover information disclosure and privacy, choice of providers and plans, access to emergency care, participation in treatment decisions, respect and non discrimination, confidentiality of health information, and complaints and appeals. In 2015, The Consumer Protection Bill has been introduced to replace the Consumer Protection Act, 1986. It proposes new rights for the consumer and reforms in business practices. A significant aspect of the bill is the right of the consumer to

cancel a contract, without giving any reason or explanation, within 30 days of its making [11].

Some literature shows that there exists a danger in state interventions to protect consumers. Sepp and Wrobel [12] wonder a growing state activity may lead to the destruction of producer freedom and consumers' sovereignty and at last of the market economy itself. But most countries are still eagerly in protecting the interests, facilitating the safety, and improving the quality of life of the consumers through policy-making and legislation.

In Taiwan, the Consumer Protection Act was promulgated on January 11, 1994; and effective on January 13, 1994. The Executive Yuan, in order to supervise and coordinate the implementation of

consumer protection affairs and thereby protect consumer rights and interests, advance the health and safety of citizens and consumers, and improve the life quality of citizens and consumers, establishes the Consumer Protection Committee (hereinafter called the CPC), which enforce the law and provide information services, including various brief introductions, activities, relevant consumer protection laws, example copies of standard contracts, and various channels of consumer petitions.

According to the Regulations Governing the Establishment of CPC Article 2, the duties of the CPC are as follows [13]:

1. Consultation and review of consumer protection policies, plans, programs, and related measures.
2. Consultation and review on the enactment of and amendments to the Consumer Protection Law and relevant laws.
3. Consultation and review on the enactment of and amendments to Templates of Standardized Contracts and their Mandatory and Prohibitive Items.
4. Consultation and review of results evaluation on enforcement of consumer protection affairs.
5. Coordination between the consumer protection competent agency and mechanisms.
6. Coordination of and response to major consumer issues, and research on improving executive supervision measures.
7. Evaluation and identification of excellent consumer protection groups.
8. Other items of cross-agency coordination and committee meeting discussions.

In 2012, CPC was restructured together with the Executive Yuan and merged into the Executive Yuan itself, and its operative units became the Department of Consumer Protection (DCP). Additionally, according to the Consumer Protection Act Article 4, "For the goods or services provided, traders shall emphasis on the importance of consumer health and safety, offer proper instructions, provide adequate and accurate information to ensure fair transaction, and take steps necessary to protect consumers." Government shall enact relevant laws and regulations to achieve the foregoing legislative intent. From this point of view, DCP and Ministry of Health and Welfare (MOHW) should promote the health and well-being of all consumers.

In response to the growing concern over the abuse of tobaccos, the Ministry of Health and Welfare plays a crucial role in fortifying the control strategies and enforcement in Taiwan. Facing a massive number of

tobacco products have hit the market in recent years, MOHW tries to manage it but still lack effective related strategies. Consumers need government could enable the product information disclosure and transparency and establish a regulatory system for it. Tobacco industry sometimes plays dark games like fraud, deception, and intentional misrepresentation, as well as coercive and high-pressure tactics of marketers, such as bait and switch advertising, chain-referral selling, free gimmicks, and fear-sell. These tricks are very dangerous to consumers. If government marks the restricted area with suitable regulation and policies (like this amendment), the industry will develop in a healthy direction, and also balance the consumer's right and the management of industry market, no more "bad money drives out good".

Commentary

The focus of these amendments, not only in line with international trends but also reflects the current community's aspirations. However, the focus of amendments is still worth discussing. This study will be described separately from the perspective of consumer protection as follows:

Business Operators' Rights Inferior to Consumers' Health Rights

Article 9 of Taiwan's Tobacco Hazards Prevention Act prohibits the promotion or advertising of tobacco products through the following methods such as: radio broadcasts, television, film, recordings, electronic message, internet, newspapers, magazines, billboards, posters, leaflets, notifications, manuals, samples, postings, displays, or text, illustrations, items, or digital recording devices, or journalist interviews, reports introducing tobacco products, or use of other people's identities or products with names or marks identical or similar to that of tobacco product brands, or using discounts to sell tobacco products or using tobacco products for promotions or gifts for sales events. Additionally, the article prohibits the packaging of tobacco products with other products for sale, and prohibits the distributing or selling of tobacco in the forms of individual sticks, loose packs or sheathed, or promote tobacco products in tea parties, meal parties, illustration conferences, testing events, concerts, lectures, sports, or public interest events. Even the prohibition is clear; however, tobacco companies will still advertise and promote tobacco products in order to expand their market. And some companies use media to criticize policy and call for freedom of business [14]. In order to safeguard public interests and health, business operators' rights should be inferior to consumers' health

rights, the government must act in accordance to the law and check for illegal tobacco advertisements and promotions.

Equal Emphasis on Punishment and Education

To implement the new regulations of the Tobacco Hazards Prevention Act, the health bureaus of all counties and cities in Taiwan are committed to its promotion and related law enforcement work. Nevertheless, there are still some people and public figures challenging the authorities and smoke in the railway cars, airplanes or internet cafes, or even playing videos of providing tobaccos to children on websites. Such actions have not only violated the regulations on prohibition of smoking at nonsmoking areas specified in the Tobacco Hazards Prevention Act and the regulation on the prohibition of supply of tobacco to those under the age of 18 specified in "The Protection of Children and Youths Welfare and Rights Act", for any actions involving the abuse of children, in addition to the investigation and prosecution by the relevant competent authorities according to the law, strict condemn to guardians are made to warn any opportunists to stop challenging the laws. It is necessary to promote related education to reduce the prevalence of tobacco products on campuses, such as providing training and workshops to school staff to enhance their knowledge about Tobacco Hazards Prevention Act, integrating lessons about tobacco hazards into courses related to health and physical education or health and nursing provided in elementary and high schools, and assist students with smoking cessation. All fields are urged to pay attention on the issue of tobacco hazards to the minor.

Promotion of Consuming Awareness

The Consumer should have correct consuming awareness and endeavor together with government and traders to enrich consumer information which could assist consumers to take appropriate and reasonable decisions accordingly in the protection of their safety and interests. Especially with respect to e-cigarettes, the inclusion of this revision of the Tobacco Hazards Prevention Act is worthy of recognition from the protection of consumer health. When a consumer dispute arises between consumers and traders, consumers may file a complaint with the traders, consumer advocacy groups, or consumer service centers or their branch offices to protect his or her rights or interests. The government should do its utmost to help safeguard the rights of consumers. Through good interaction and cooperation, a new governance model can be achieved [15].

Conclusion

Tobacco use is a major preventable cause of premature death and disease worldwide. Currently, approximately 5.4 million people die each year due to tobacco-related illnesses—a figure expected to increase to more than 8 million a year by 2030 [16]. The Government should take responsibility for protecting citizens' health [17] and authorities concerned should prevent future health issues. Before formulating new regulation policies, the authorities should obtain social support and communicate with various activists to reduce external resistance to change [18]. Regulatory agencies should also obtain a balance among the interests of all parties and endeavor to protect consumers' rights and interests. Health researchers should develop links with health service managers and politicians (and vice versa) to ensure advice is scientifically sound [19].

According to the 2014 Tobacco Atlas, about 20% of the world's adults are smokers. In 2009, the value of tobacco products reached nearly NTD 5.9 trillion for a 10-year growth of 13%. In the past, tobacco consumption was highest for countries with high income. However, target sales, higher social acceptance, continued economic development, and population growth meant that tobacco consumption in middle-and low- income countries are rising as well [4]. Through the gradual revision of the Tobacco Hazards Prevention Act, the harm of tobacco products can be reduced and the health of consumers can be protected. Law has to provide specific and detailed directions to the subjects to be meaningful and effective [11].

This study conducts Consumer Protection Perspective to comment the Tobacco Hazards Prevention Act. The situation of using of tobacco is getting worse all over the world. Not only Tobacco Hazards Prevention Act, Consumer Protection Act is a suitable way to ease the situation. Through both ways, the government can request the tobacco trader for protecting the interests, facilitating the safety, and improving the quality of life of the consumers

The amendment draft of Tobacco Hazards Prevention Act is a good start for consumers. This study contributes the theory of Consumer Protection application, but it is not good enough. It is necessary to encourage future inter-disciplinary studies to examine such like market competition associated tobaccos control policies, these issues are important and needed to be explored.

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