

AS INTRODUCED IN THE RAJYA SABHA
ON THE 10TH MARCH, 2017

Bill No. LXXIII of 2016

THE SURROGATE ADVERTISEMENTS (PROHIBITION) BILL, 2016

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BILL

*to prohibit surrogate advertisements and for matters connected therewith
or incidental thereto.*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Surrogate Advertisements (Prohibition) Act, 2016. Short title and
(2) It extends to the whole of India. extent.

- 5 2. (1) In this Act, unless the context otherwise requires,— Definitions.

(a) "advertisement" includes any pamphlet, writing, drawing, painting, photograph, bill, circular, notice, label, poster, hoarding, banner or other documents and also includes any visible representation made through radio, television, cassettes or slides by means of any light, sound, smoke or gas and publication in print media
10 such as newspapers, magazines, souvenirs and books;

(b) "appropriate Government" means in the case of a State, the Government of that State and in all other cases, the Central Government;

(c) "prescribed" means prescribed by rules made under this Act; and

(d) "surrogate advertisement" means an advertisement which shows a substitute product in the guise of the real one which otherwise cannot be legally advertised through the print and electronic media. 5

(2) Words and expressions used but not defined in this Act but defined in the Cinematograph Act, 1952 and the Cable Television Networks (Regulation) Act, 1995 shall have the same meanings respectively assigned to them in those Acts. 37 of 1952
7 of 1995

Prohibition to publish or telecast surrogate advertisements. 3. No person shall publish or telecast or cause to be published or telecast or arrange to take part in the publication or telecast of surrogate advertisement. 10

Appropriate Govt. to designate agencies to implement. 4. The appropriate Government shall designate such agencies as it may consider appropriate for effective implementation of the provisions of this Act.

Penalty. 5. Whoever contravenes the provisions of this Act shall be punished with imprisonment for a term which shall not be less than three years but which may extend upto ten years and with fine which shall not be less than three lakh rupees but which may extend upto ten lakh rupees. 15

Offences by Companies, firms and other associations. 6. Where an offence under this Act has been committed by a company, firm or other association of individuals, every person who, at the time the offence was committed, was incharge of, and was responsible to the company, firm or association for the conduct of the business of the company, firm or association, as the case may be, shall be deemed to be guilty and shall be liable to be proceeded against and punished accordingly. 20

Act not in derogation of other laws. 7. The provision of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act.

Act not to apply to certain advertisements. 8. (1) For the removal of doubts, it is hereby declared that the provisions of this Act shall not apply to advertisements which are aimed at educating the general public or a particular group, in the public interest . 25

(2) For the purpose of deciding whether an advertisement is aimed at educating general public or a particular group, the Central Government shall designate such number of officers, not below the rank of Joint Secretary, as it may deem fit. 30

Power to make rules. 9. (1) The Central Government may by notification in the Official Gazette, make rules for carrying out the purpose of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall there after have effect only in such modified form or be of no effect, as the case may be; however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 35
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STATEMENT OF OBJECTS AND REASONS

The Government of India has banned product advertising for liquor and cigarette companies under the Cable Television Network (Regulation) Act, 1995. Rule 7 of the Cable Television Rules, 1994 also prohibits any direct or indirect promotion of such items in the public domain. Section 6 of Chapter III of Advertising Standard Council of India (ASCI) Code had also laid down certain basic guidelines prohibiting surrogate advertising. Section 2(1) (r) of the Consumer Protection Act, 1986 gives a comprehensive definition of unfair trade practices. Section 5 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) prohibits promotion of brand of all tobacco products in all forms of audio, visual and print media. Article 13 of the World Health Organisation Framework Convention on Tobacco Control 2005 bans advertising, promotion and sponsorship of tobacco. However, manufacturers of liquor, cigarette, tobacco and other harmful products injurious to health still promote their products through surrogate advertisement. Surrogate Advertisements are not only misleading, but also false and dishonest in many cases.

The proposed Bill seeks to put a total ban on surrogate advertising of liquor, tobacco and other harmful products to prohibit sponsorship of sports and cultural events either directly or indirectly by these manufacturers.

Hence this Bill.

DR. T. SUBBARAMIREDDY

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

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(Dr. T. Subbarami Reddy, M.P.)