



An Bille um Ailse a Chóireáil (Fógráin), 2018
Treatment of Cancer (Advertisements) Bill 2018

Mar a tionscnaíodh

As initiated



**AN BILLE UM AILSE A CHÓIREÁIL (FÓGRÁIN), 2018
TREATMENT OF CANCER (ADVERTISEMENTS) BILL 2018**

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ACTS REFERRED TO

Dentists Act 1985 (No. 9)

Health (Pricing and Supply of Medical Goods) Act 2013 (No. 14)

Health and Social Care Professionals Act 2005 (No. 27)

Irish Medicines Board Act 1995 (No. 29)

Medical Practitioners Act 2007 (No. 25)

Nurses and Midwives Act 2011 (No. 41)

Pharmacy Act 2007 (No. 20)



AN BILLE UM AILSE A CHÓIREÁIL (FÓGRÁIN), 2018
TREATMENT OF CANCER (ADVERTISEMENTS) BILL 2018

Bill

entitled

An Act to provide, in the interests of the common good, for the prohibition of certain advertisements relating to the treatment of cancer and to provide for related matters. 5

Be it enacted by the Oireachtas as follows:

Interpretation

1. (1) In this Act—

“Authority” means the Health Products Regulatory Authority established by section 3 (as amended by section 36 of the Health (Pricing and Supply of Medical Goods) Act 2013) of the Irish Medicines Board Act 1995; 10

“person” shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual, and shall include the Authority. 15

(2) In this Act references to cancer shall include references to persons suspected to have cancer or to be at risk of getting cancer.

Prohibition of certain advertisements

2. (1) No person shall take any part in the publication of any advertisement containing an offer to treat any person or provide any remedy for cancer, or any advice in connection with the treatment of cancer, or which suggests that a medical consultation, diagnosis, treatment or surgical operation is unnecessary for the treatment of cancer. 20

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

(3) A person who is guilty of an offence under this section shall be liable— 25

(a) on summary conviction to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €1,000,000 or to imprisonment for a term not exceeding 5 years or to both.

(4) In any proceedings for a contravention of *subsection (1)*, it shall be a defence for the person charged to prove that— 30

(a) the advertisement to which the proceedings relate was published in order to bring

it to the notice of persons of the following classes or of one or some of them, that is to say—

- (i) persons registered in a register established or maintained by or under the Dentists Act 1985,
 - (ii) persons registered in a register established or maintained by or under the Medical Practitioners Act 2007, 5
 - (iii) persons registered in a register established or maintained by or under the Nurses and Midwives Act 2011,
 - (iv) persons registered in a register established or maintained by or under the Pharmacy Act 2007, 10
 - (v) persons designated by or under section 4 of the Health and Social Care Professionals Act 2005,
 - (vi) persons undergoing training with a view to becoming a member of the class of persons aforesaid,
- (b) the said advertisement was published only in a publication of a technical character intended for circulation mainly amongst persons of one or more of the classes of persons referred to in *paragraph (a)*, 15
- (c) the said advertisement was published in such circumstances that the person did not know and had no reason to believe that the person was taking part in the publication thereof, or 20
- (d) the publication of the advertisement is permitted by enactment or otherwise by law.
- (5) An authorised undertaking within the meaning of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011) shall not breach *subsection (1)* by the provision of authorised services to a person who contravenes that subsection. 25
- (6) A summary offence under this Act may be prosecuted by the Authority.
- (7) In this section “advertisement” includes any publication made orally or in writing and includes any electronic means of publication including the Internet, social media or other means of social communication. 30

Civil remedy

3. (1) Where a person has contravened *section 2*, any person may, whether or not the contravention is continuing, apply to the Court for an order under this section.
- (2) The Court may, on the hearing of the application under this section, make such order as it thinks fit or may refuse the application or the granting of relief in whole or in part. 35
- (3) Without prejudice to the generality of the foregoing, a Court may grant—
- (a) a declaration that the person has contravened *section 2*,
 - (b) an order directing that the breach of *section 2* cease,

- (c) an order directing steps to remedy the contravention,
 - (d) a restitution order provided for in *subsection (6)*,
 - (e) an order provided for in *subsection (7)*, or
 - (f) such other order as the Court deems appropriate.
- (4) The Court when dealing with an application under this Act may make any interim or interlocutory order as it considers appropriate including an order for discovery of records (including financial records). 5
- (5) The Court shall not deny interim or interlocutory relief solely on the basis that the applicant may not suffer any damage if such relief were not granted pending conclusion of the action. 10
- (6) The Court may order a person to pay a sum by way of restitution to an applicant, or to such other person, who has suffered loss or damage as a result of a contravention of *section 2* (in this section referred to as a “restitution order”).
- (7) The Court may order a person to pay to the applicant or other person such amount, by way of financial penalty, as the applicant may propose as appropriate. 15
- (8) In deciding what amount by way of restitution order or financial penalty, or both, if any, shall be payable, the Court shall consider the circumstances of any contravention of *section 2*, including but not limited to—
- (a) its duration,
 - (b) the effect on the applicant and on persons with cancer, 20
 - (c) the submissions of the applicant on the appropriate amount,
 - (d) the level of any enrichment by reason of the contravention of *section 2*,
 - (e) any excuse or explanation for the contravention, and
 - (f) any admission by the respondent, or remedial steps taken by the respondent, concerning the contravention of *section 2*. 25
- (9) Where the Court imposes a restitution order or financial penalty such payment may be enforced as if the payment were due on foot of a decree or order made by the Court by way of civil proceedings for a liquidated sum.

Report concerning the Act

4. (1) The Authority shall— 30
- (a) not later than 18 months after the establishment day, and not later than the end of each subsequent three year period, commence a review of the operation of this Act, and
 - (b) not later than 12 months after the commencement of a review under *paragraph (a)*, make a report to each House of the Oireachtas of its findings and conclusions, including such recommendations (if any) resulting from that review as it considers appropriate. 35
- (2) Recommendations under *subsection (1)* shall include such recommendations (if any)

for amendments to the scope of this Act including extending this Act to serious illnesses other than cancer.

Short title and commencement

5. (1) This Act may be cited as the Treatment of Cancer (Advertisements) Act 2018.
- (2) This Act shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions. 5

An Bille um Ailse a Chóireáil (Fógráin),
2018

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dheánamh socrú, ar mhaithe le leas an phobail, maidir le toirmeasc ar fhógráin áirithe a bhaineann le hailse a chóireáil, agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An Teachta Cáit Uí Chonaill a thug isteach,
12 Nollaig, 2018

Treatment of Cancer (Advertisements) Bill
2018

BILL

(as initiated)

entitled

An Act to provide, in the interests of the common good, for the prohibition of certain advertisements relating to the treatment of cancer and to provide for related matters.

Introduced by Deputy Kate O'Connell,
12th December, 2018

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