

ANTIGUA AND BARBUDA



TOBACCO CONTROL ACT 2018

No. 17 of 2018

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ANTIGUA AND BARBUDA
TOBACCO CONTROL ACT 2018

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[L.S]



I Assent,

Rodney Williams
Governor-General.

18th September, 2018.

ANTIGUA AND BARBUDA

TOBACCO CONTROL ACT 2018

No. 17 of 2018

AN ACT to fulfil the government's international legal obligations under the WHO Framework Convention on Tobacco Control and to protect present and future generations from the devastating health, social, economic, and environmental consequences of tobacco use and exposure to tobacco smoke.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I

PRELIMINARY

1. Short title

This Act may be cited as the Tobacco Control Act, 2018.

2. Commencement

This Act shall come into effect on a date designated by the Minister by a Notice published in the *Gazette*.

3. Interpretation

In this Act—

“additive” means a substance, other than tobacco, that is added to tobacco products during processing or manufacturing, including but not limited to preservatives, flavourings, colouring agents, ameliorants, humectants, and processing aids;

“advertising and promotion” with respect to tobacco products means, any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

“authorised officer” means an officer who, by law, has the responsibility to inspect and investigate compliance to ensure that the Tobacco Control Act is adhered to;

“blind” means opaque, cannot be seen through;

“bulk packaging” means packaging containing at least ten thousand cigarettes or cigars, or packaging containing more than two hundred grams of other tobacco products;

“characterizing flavour” with respect to tobacco products, means a taste or smell, other than one of tobacco, resulting from a natural or artificial additive or a combination of additives, which is noticeable before or during the consumption of the tobacco product. Examples of characterizing flavours include, but are not limited to, fruit, spices, herbs, alcohol, candy, menthol, chocolate, or vanilla;

“component”, with regard to a tobacco product, means a part of a tobacco product, whether or not sold separately from the tobacco product, such as the paper, filter, plug wrap, and tube in the case of a smoked product, and the portion pouch in the case of a tobacco product that is not smoked;

“Convention” or “FCTC” means The World Health Organization Framework Convention on Tobacco Control;

“electronic cigarettes” are electronic nicotine delivery systems that do not contain tobacco nor relay combustion and do not generate smoke that resemble smoked tobacco products, or that are packaged or labelled as “electronic cigarettes” or “e-cigarettes” or similar name;

“electronic nicotine delivery system” (“ENDS”) means an electronically operated product designed to deliver an aerosol to users by heating a solution comprised of nicotine typically, but not necessarily, propylene glycol and/or glycerol, and often flavouring, and doesn’t contain tobacco;

“enclosed” means any space covered by a roof or enclosed by one or more walls or sides regardless of the type of material used for the roof, walls or sides, and regardless of whether the structure is permanent or temporary;

“entrance” or “exit” do not include –

- (a) parking lots;
- (b) gateways; or
- (c) driveways;

“export”, with respect to tobacco products means to transfer or send these products from Antigua and Barbuda to a foreign country for trade or sale, or to arrange or offer to do so, and “exporter” means a person engaged in these activities;

“flavouring” means an additive that imparts, modifies, or enhances, singly or in combination with other ingredients, a taste or smell;

“government” or “government authority” includes any ministry or department of the Government; the House of Representatives; the Senate; the judiciary; and a corporation established by an Act of Parliament for public purposes or any subsidiary company; any paid or unpaid board, commission, authority, committee or other body established to perform public functions on behalf of the Government;

“health warning” or “warning” means the prescribed pictorial and textual information required to be displayed on tobacco packaging and labelling about the health or other effects of tobacco use or exposure to tobacco smoke or other relevant messages, such as information about quitting;

“import”, with respect to tobacco products means to bring these products into Antigua and Barbuda from an outside source, especially from a foreign country, for trade or sale, or to arrange or offer to do so, and “importer” means a person engaged in these activities;

“ingredient”, with respect to a tobacco product, means tobacco, components and the materials used to manufacture the components, additives, residual substances found in tobacco after storage and processing, and non-contaminant substances that migrate from the packaging material into the product.;

“legal age for sale” means the age, which shall be at least 18 years old, when an individual may lawfully be sold tobacco or a tobacco product or allowed to sell or handle tobacco or a tobacco product in a commercial capacity;

“manufacture”, with respect to tobacco means to fabricate, produce, process, package or label tobacco products or arrange or offer to do so, and “manufacturer” means a person engaged in these activities;

"Minister" means the Minister to whom responsibility for health is assigned;

"Ministry" means the Ministry with responsibility for health;

“minor” means any person under the age of 18 years;

“outdoor” means any space or place that is not “enclosed” as that term is defined in this Act;

“outside package and labelling” means any packaging and labelling used in the retail sale of a tobacco product;

"person" means any natural or legal person, and includes but is not limited to, any individual, proprietor, firm, partnership, corporation, franchise, organization, agency, association, institution, or other entity;

"public conveyance" means any vehicle used for carriage of members of the public, usually for reward or commercial gain, including taxis but does not include privately-operated vehicles, not used for commercial purposes;

"public place" means any place accessible to the general public or place of collective use, regardless of ownership or right of access but does not include privately-occupied residences, not used for commercial purposes;

“relevant or related to tobacco control” means any policies, laws, regulations, measures, programmes, or initiatives that affect or are likely to affect of tobacco control policy, such as but not limited to those having to do with tax, price, trade, or agriculture;

“responsible for tobacco control”, “responsibility for tobacco control”, or “role in tobacco control” includes being involved in or contributing to or being in a position to be involved in or contribute to tobacco control policy development or implementation within any branch of government at the national or sub-national level;

"second hand smoke" means the smoke emitted from the burning end of a cigarette or from other smoked tobacco products, usually in combination with the smoke exhaled by the smoker;

“sell”, with respect to a tobacco products means to exchange the product for money or other consideration at wholesale or retail in Antigua and Barbuda, or arrange or offer to do so, and “seller” means a person engaged in these activities;

"smoke” means being in possession or control of a lit tobacco product, regardless of whether the smoke is being actively inhaled or exhaled;

“sponsorship”, with respect to tobacco products means any form of contribution to any event, activity, organization, or individual that has the aim, effect or likely effect of promoting a tobacco product, tobacco use either directly or indirectly;

“tobacco” means leaves and other natural, processed, or unprocessed parts of a tobacco plant, including expanded and reconstituted tobacco;

“tobacco control” means a range of supply, demand, and harm reduction strategies that aim to improve the health of the population by eliminating or reducing the consumption of tobacco and tobacco products and exposure to second hand smoke;

“tobacco control policy development or implementation” includes, but is not limited to, the formulation, implementation, administration, or enforcement of tobacco control policies, laws, regulations, measures, programs, or initiatives, including those relevant or related to tobacco control;

“tobacco industry” or “entity in the tobacco industry” means tobacco manufacturers;

“tobacco product” means any product entirely or partly made from the leaf of the tobacco as raw material which is manufactured to be used for smoking, sucking, chewing or snuffing;

“wholesale”, with respect to tobacco products means the purchase of bulk quantities of tobacco products and resale of the products in Antigua or Barbuda, chiefly to retailers or other merchants or to industrial, institutional, or commercial users for resale or business use, or to arrange or offer to do so, and “wholesaler” means a person engaged in these activities;

"workplace" means any place used by one or more persons during their paid or unpaid employment or work and includes work vehicles used during or incidental to the course of employment or work. This excludes private residences except those used for commercially operated childcare activities.

PART II

ADMINISTRATIVE

4. Multi-sectorial body to be established in the Ministry

(1) The Minister shall establish a multi-sectorial body, to be known as the Antigua and Barbuda Tobacco Free Initiative (hereinafter, “ABTFI”), within the Ministry to meet periodically and to provide consultation and coordination with respect to any matter under this Act, including

(a) developing and implementing a national strategic approach to tobacco control;

(b) conducting periodic evaluations of national tobacco control policies and programmes;

- (c) reporting on Antigua and Barbuda's progress in tobacco control to the World Health Organization and at international and regional conferences hosted for parties and signatories to the FCTC;
 - (d) establishing evidence-based programmes to inform the public of—
 - (i) the dangers and addictiveness of tobacco use and exposure to tobacco smoke;
 - (ii) the benefits of and strategies for quitting tobacco use;
 - (iii) the tobacco industry's operations, tactics, and practices, including those used to interfere with the development or implementation of effective tobacco control policy;
 - (iv) the health, economic, environmental, and other effects of tobacco production and use; and
 - (v) any other information for increasing public and consumer awareness of the tobacco-related health, social, environmental, and other harms and costs;
 - (e) facilitating training of authorized officers; and
 - (f) any other responsibilities assigned by the Minister.
- (2) Members ABTFI shall be appointed, at a minimum, from the following -
- (a) Ministries responsible for:
 - (i) Health
 - (ii) Environment;
 - (iii) Education;
 - (iv) Finance;
 - (v) Trade;
 - (vi) Justice;
 - (vii) Tourism;
 - (viii) Agriculture;

- (ix) Labour; and
 - (x) Social Transformation;
 - (xi) Legal manufacturer or representative of the private sector
- (b) Civil society not affiliated with the tobacco industry with an expertise in public health, medicine, tobacco control, or other relevant field; and
- (c) Any other Ministry, department, or entity determined by the Minister.

(3) The Unit shall be provided with adequate staff with the requisite qualifications and experience for the discharge of its functions.

(4) The Unit shall be provided with adequate funding to carry out its responsibilities and functions.

5. Designation and function of authorized officers

(1) Officers authorized to carry out compliance inspections and investigations under the Act shall include police officers and special constables, customs officers, public health inspectors, prices and consumer affairs inspectors, and any other unit or person designated by the Minister in collaboration with the appropriate Ministry under which the unit or person operates.

(2) The Minister may appoint suitably trained and authorized staff of ABTFI, even if they do not fall within the ministries or departments mentioned in (1), to serve as officers authorized to carry out compliance inspections and investigations.

6. Power of authorized officers

(1) Authorised officers shall have the power to—

- (a) examine and open any materials, packages or anything the authorized officer reasonably believes is used or is capable of being used for or in the manufacture, storage, distribution, or sale of tobacco, tobacco products and for or any advertising, promotion, or sponsorship of tobacco products or tobacco use;
- (b) examine any manufacturing operation or process carried out on the premises;
- (c) examine and make copies of or from any books, documents, notes, files, including electronic files, or other records that the authorized officer reasonably believes might contain information relevant to determining compliance with this Act;
- (d) interview any person the authorized officer believes may have information relevant to making a compliance determination;

- (e) take samples of tobacco products or components of products, and their packaging and labelling, from any business where they are found, and have the tobacco products tested; and
- (f) post no-smoking signs in public places and workplaces, and on public conveyances.

(2) Any authorized officer may —

- (a) enter a public place, workplace and means of public transport, and any other place the authorized officer reasonably believes is used for the manufacture, import, export, sale, or storage of tobacco products, to conduct inspections or investigations at any time during business or operating hours or at any other necessary time;
- (b) stop, search, and detain any aircraft, ship, vehicle or other means of transport or storage in which the authorized officer reasonably believes bulk packaging of tobacco products are or were contained or conveyed, and examine, open, and take samples; and
- (c) seize and detain from any business or order the storage without removal or alteration of any tobacco product, packaging and labelling, advertising, promotion, or sponsorship items or materials, or other thing the authorized officer reasonably believes violates the Act.

(3) In acting under(2)(c), the authorized officer shall provide the person in possession of the product or item with a written record in respect of the items seized and detained and the grounds for same.

(4) Where any seized and detained product or item is determined to have met the legal requirements, it shall be returned to the premises from which it was seized within thirty working days of seizure.

(5) Where any seized and detained product or item does not meet the legal requirements, or is an item prohibited under the Act, it may be confiscated and kept as evidence in legal proceedings.

(6) An authorized officer shall not abuse his or her authority or position for personal or financial gain or for other unauthorized purposes.

7. Identification of authorized officers

(1) In exercising their functions under this Act, authorized officers shall present proof of identity if requested and appropriate legal order notification.

(2) A person shall not deny, obstruct or hinder an authorized officer in the performance of his or her duties.

8. Tobacco licence required

(1) A licence shall be required for any person who manufactures, imports, distributes at wholesale, sells at retail, or transports bulk quantities of tobacco or tobacco products in Antigua and Barbuda.

(2) The Comptroller of Customs of the Ministry of Finance, shall serve as the licencing authority under this Act and shall be responsible for prescribing application requirements, including the submission of specified information useful for preventing and controlling illicit trade, acting on initial and renewal applications, and taking appropriate action for suspending, cancelling, or revoking a licence as warranted, in accordance with requirements and procedures established.

(3) The licencing authority shall consult with the Minister in prescribing regulations for licencing.

(4) The application fees set out in the First Schedule shall be paid to the Accountant General or any authorized Government Revenue Office and the receipt shall be submitted with the application.

(5) The Minister may, by an Order published in the Gazette, amend the First Schedule.

PART III

LEGAL OBLIGATIONS & IMPLEMENTATION

9. Areas where smoking is prohibited

(1) A person shall not smoke a tobacco product in any enclosed public place, enclosed workplace, or on a public conveyance, including, but in no way limited to, any place listed in the Second Schedule.

(2) A person shall not smoke a tobacco product in any of the following outdoor public or work spaces—

- (a) any outdoor space that is designated as a no-smoking area by the person responsible for the premises;
- (b) within 15 meters of any doorway, operable window, or air intake mechanism;
- (c) within 15 meters of any waiting area or queue, including but not limited to public transport stops;
- (d) the premises of any child care facility or educational facility at any level of instruction;
- (e) the premises of any health care facility;
- (f) a playground, amusement park, plaza, or public park;

- (g) a stadium, arena, or any kind of sports, music, arts, or other performance space;
- (h) a space for the service or consumption of food or drink; and
- (i) any other outdoor public or work space as may be specified in regulations.

(3) Notwithstanding subsection (2), the owners and operators of businesses, including bars, restaurants, casinos, clubs and tourist establishments, may establish outdoor smoking areas, which accord with the provisions of subsection 4.

(4) Owners and operators of places mentioned in subsection 3 shall cause all outdoor smoking areas to—

- (a) be open-sided;
- (b) where covered by a roof, have only such columns as are necessary to support the roof;
- (c) be located at a distance of at least ten metres from any structure or area where smoking is prohibited;
- (d) be located in an area where access by persons, other than those smoking, is not necessary;
- (e) be physically separated and structurally unconnected to, areas where smoking is prohibited.

(5) Persons responsible for the public places, workplaces, or public conveyances specified in (1) and (2) shall have a continuous duty to—

- (a) prominently post no-smoking signs, as prescribed by the Ministry with regard to format, content, design, size, display, location, and all other details;
- (b) remove all ashtrays from all indoor areas of the premises and any outdoor areas where smoking is prohibited;
- (c) supervise observance of the smoking ban;
- (d) take reasonable steps to discourage and stop any person from smoking where prohibited, including asking the person to refrain from use, discontinuing service, asking the person to leave the premises or public conveyance when it is safe to do so, and/or contacting law enforcement or other appropriate authority as necessary; and

- (e) investigate any complaints and take any necessary action for compliance, and do so without any explicit or implicit threat or act of retaliation against a complainant.

(6) Where a manager, owner or other person in charge of the place or public conveyance fails to take action required in (3) or authorized or acquiesced in any act in contravention of this section, that person is deemed to have committed an offence and shall be held personally liable.

10. Prohibition on toy or candy cigarettes, imitation tobacco products

A person shall not manufacture, import, distribute at wholesale, sell, or display for sale in Antigua and Barbuda, or advertise or promote, any sweets, snacks, toys or other non-tobacco items or objects in the form of tobacco products, or any products which imitate or resemble, in whole or part, tobacco products.

11. Prohibition on sales to or by persons under the legal age

- (1) A person shall not sell a tobacco product to any person who is under the legal age for sale.
- (2) A person shall not hire or use anyone to sell or handle a tobacco product who is under the legal age for sale.
- (3) Prior to any tobacco product sale, a retail seller shall verify the age of the purchaser by checking a reliable form of identification.

12 Prohibition on self-service sales of tobacco products

A person shall not sell any tobacco product in a manner by which a retail consumer may handle the product without the assistance of a sales clerk or other agent of the seller prior to purchase.

13. Prohibition on sales by remote means

A person shall not sell any tobacco product through any means by which the seller and retail purchaser are not in the same physical location, including through the mail, the internet, telecommunications, and any other evolving technology-based modes of sale.

14. Prohibition on sales of tobacco products in certain places

A person shall not sell a tobacco product anywhere within the indoor or outdoor premises of the following places—

- (a) any facility where health care services are provided;
- (b) sporting, entertainment, music, dance, and social venues or events;
- (c) government facilities;
- (d) educational facilities; and
- (f) any other place as may be prescribed in regulations.

15. Prohibition not specified

The Minister may by regulations prohibit or restrict any other sale practices in furtherance of the objectives of the Act or the FCTC, including raising the legal age for sale.

16. Prohibition against tobacco advertising promotion and sponsorship

(1) All forms, methods, and means of tobacco advertising and promotion, and tobacco sponsorship, are prohibited.

(2) A person shall not—

(a) initiate;

(b) produce;

(c) publish,; or

(d) disseminate - when the person is aware of or is in a reasonable position to become aware of the content, and in a position to reasonably be able to control it,

any tobacco advertising and promotion, or tobacco sponsorship.

(3) The prohibition on tobacco advertising, promotion, and sponsorship includes any commercial communication, act or practice that is intended or is likely to promote a tobacco manufacturer, wholesale distributor, importer, or retailer, that is false, misleading or deceptive or is likely to create an erroneous impression about its characteristics, health effects, hazard or emissions

(4) A person involved in dissemination of communications content through analog or digital media and communications, including but not necessarily limited to any content host, content navigator, or access provider, will have fulfilled the requirements of (1)d)if after becoming aware of any tobacco advertising, promotion, or sponsorship content, the person removes the content when technically possible, or takes reasonable efforts to disable access to it.

(5) This section applies to all domestic and cross-border tobacco advertising, promotion, and sponsorship.

(6) Without limiting in any way the broad application of this section, the Third Schedule provides, for illustrative purposes only, non-exhaustive examples of advertising, promotion, and sponsorship prohibited under the Act. The Minister shall have the authority to expand the examples in the Third Schedule.

(7) The following, even if they have an incidental promotional effect, shall not be considered tobacco advertising, promotion, or sponsorship subject to the provisions of (1) through (6)—

(a) a price list where tobacco products are legally sold, provided the list contains nothing more than the tobacco product brand name, package quantity, price, and any government-required or authorized information;

- (b) depictions of tobacco or tobacco products or tobacco use in media where the depiction is purely incidental or is justified by reasons of historical accuracy or legitimate journalistic or artistic expression, or where the depiction is necessary for educational purposes; provided no payment or other consideration was offered or made in exchange for the depiction;
- (c) genuine political, social, or scientific commentary about tobacco products or tobacco use; provided no payment or other consideration was offered or made in exchange for the commentary;
- (d) information that is necessary for business administration, for required corporate reporting, or that is otherwise required by law to be reported, but only to the extent access is limited to the person(s) who need to receive it for business administration or who require it to be reported by law.
- (e) product information made accessible to persons within the tobacco trade who need the information for trading decisions, but only to the extent access is limited to those persons; and
- (f) tobacco manufacturers' newsletters destined for and distributed only to the manufacturers' employees, contractors, suppliers, and other tobacco-related business partners, and only to the extent their distribution is limited to such persons.

(9) Where the retailer displays the brand element, such display shall be subject to the following restrictions—

- (a) there shall be only one area in any business premises where such display may be permitted;
- (b) only one packet size of twenty cigarettes of each brand may be displayed in the display area;
- (c) the size of the display area shall not exceed one square metre;
- (d) there shall be no display of cartons; and
- (e) where the venue is an enclosed facility, the product displays shall not be visible from outside unless those displays are in respect of non-tobacco branded element.

(9) Regulations may require prescribed warnings and other requirements, conditions, or restrictions with respect to any of the items listed in (8). In addition, a person shall not employ any means in connection with these items that are false, misleading, deceptive, or likely to create an erroneous impression about a tobacco product's characteristics, health effects, hazards, or emissions.

PART IV

PACKAGING AND LABELLING

17. Conformity with Packaging and Labelling requirements

(1) A person shall not manufacture, import, distribute at wholesale, or sell a tobacco product unless it and its packaging and labelling comply with the requirements of this Part.

18. Labelling

(1) The unit and outside packaging and labelling of all tobacco products shall display permanently affixed large, clear and visible prescribed health warnings comprised of legible text and corresponding images, as prescribed in Regulations. Only those warnings prescribed shall be used.

(2) The warnings shall occupy each principal display area of the package, covering the proportion of each display area prescribed by the Minister in regulations, which shall be fifty percent (50%) of each principal display area.

(3) The visibility of the warnings shall be placed at or toward the top of each principal display areas, as prescribed, and must not be susceptible to being damaged, concealed, obstructed, obscured, disrupted, covered, or changed by any package feature or mechanism or by anything supplied by the manufacturer, importer or retail seller to cover the warnings; provided that in the case of a flip top package, the front of the pack warning may be temporarily disrupted during opening.

(4) The warnings shall not be covered by any stamps or other required markings unless required by law.

(5) The Minister shall prescribe a set of at least six warnings that shall be displayed for a period, to be known as the rotation period, of up to twenty-four (24) months, as determined by the Minister. During the initial and subsequent rotation periods, each of the prescribed warnings from the set of warnings prescribed for the rotation period must appear on an equal number of retail packages for each brand within each brand family for each package size and type.

(6) Immediately after the end of each rotation period, the warnings from the previous period must be replaced with the new set of warnings prescribed in regulations, which must appear concurrently, as above, for the next rotation period.

(7) The unit and outside packaging and labelling of all tobacco products shall display permanently affixed information on the product's contents and emissions, which shall be descriptive only, as prescribed by the Minister in regulations. This information shall be placed on at least one of the lateral sides of the package, as prescribed.

(8) Content and emissions information shall be required to rotate in the manner specified for the health warnings in (5) and (6), unless otherwise provided in regulations.

(9) The unit and outside packaging and labelling of all tobacco products shall display the statement: “Sales allowed only in OECS”, or other statement as may be prescribed in regulations, in the manner prescribed.

(10) All required textual information on tobacco product unit and outside packaging and labelling to be sold in Antigua and Barbuda shall be legible and in English.

(11) The Minister shall have the authority to provide electronic samples of the health warnings and contents and emissions information, and any other information required for tobacco product packaging and labelling. Any electronic samples provided by the Minister shall be reproduced by electronic imaging derived from the original images used for the samples and displayed with the same quality and clarity.

(12) After 9 months from the date of receipt of the electronic images from the Ministry as published in the Gazette of the first set of health warnings required under this Act, a person shall not manufacture, import, distribute at wholesale, or sell any tobacco product within the territory unless its packaging and labelling displays the warnings in the manner prescribed. After that date, in addition to any applicable penalties provided in the Act or regulations, any non-compliant tobacco product packaging and labelling shall be subject to confiscation and destruction, along with the contents of the package.

(13) Between rotation periods when an old set of health warnings is being replaced with a new set, a phase in period of up to 6 months from the date the first rotation ends shall be allowed. During this six (6) month period, both the old set and new set of warnings may continue to appear on unit and outside packaging and labelling. At the end of the six (6) months, in addition to any penalty to which the responsible person may be subject, any packaging and labelling with the warnings from the prior rotation period, along with the contents of the package, shall be subject to confiscation and destruction.

(14) The Minister shall have the authority to prescribe any other information required to be displayed, or prohibited from being displayed, on tobacco product packaging and labelling in addition to health warnings, descriptive contents and emissions information, and legal place of sale, along with any details for the display of any such information.

19. Deceptive or misleading information; promotional packaging

(1) No tobacco product packaging or labelling, or the product itself, shall directly or indirectly promote a tobacco product by any means that are false, misleading, deceptive, or likely or intended to create an erroneous impression about the characteristics, health effects, or hazards of the product or its emissions. This shall include means that directly or indirectly create the impression that a particular tobacco product is less harmful than other tobacco products.

(2) The prohibitions in (1) include, but are not limited to, the use of —

- (a) descriptors, words or terms, such as “light”, “ultra light”, “mild”, “low tar”, “smooth”, “slim”, “extra”, “ultra”, “natural” and other terms in any language that

are likely or intended to mislead consumers, including when used as part of a brand name or trademark, and

- (b) any number, figurative, trademark, colour or colour combination, or other sign of any kind in whole or part that is likely or intended to mislead consumers, including when used as part of a brand name or trademark.

(3) Quantitative information on emissions shall not be displayed or implied anywhere on or inside the product's unit or outside packaging or labelling, or on the product itself, including when used as part of a brand name or trademark.

(4) The Minister shall have the authority to specify additional prohibitions on misleading packaging and labelling and product features.

(5) The Minister shall have broad authority to regulate promotional features of tobacco product packaging and labelling and the product, itself, including but not limited to—

- (a) any features of the retail packaging designed to change after retail sale, including, but
 - (i) heat activated inks;
 - (ii) inks or embellishments designed to appear gradually over time, including on the product itself;
 - (iii) inks that appear fluorescent in certain light, including on the product itself;
 - (iv) panels designed to be scratched or rubbed to reveal an image or text;
 - (v) removable or hidden tabs or panels; and
 - (vi) fold-out tables or panels;
- (b) the use of logos, colours, brand images and other promotional information or features on, in, or as part of tobacco product packaging and labelling, including inside and outside surfaces, and on or as part of the product itself, other than brand name or product name displayed in a specific colour and font;

(6) The Minister shall have the authority to regulate the physical features, including but not limited to, the dimensions, opening mechanisms, and other features of unit and outside tobacco product packaging and labelling. This authority shall extend also to the physical features, including but not limited to, the dimensions of the product itself.

20. Minimum package size for tobacco products

(1) A person shall not manufacture, import, distribute at wholesale, or sell a smokeless tobacco product unless it is contained in an intact package of at least ten grams.

(2) A person shall not manufacture, import, distribute at wholesale, or sell a smoked tobacco product unless it is contained in a package containing at least 10 sticks.

(3) The prohibitions in (1) and (2) include the sale of individual sticks of smoked products and individual units of smokeless tobacco products.

21. Prohibition on certain additives; regulation of tobacco products

(1) A person shall not manufacture, import, distribute at wholesale, or sell any tobacco product that does not meet all product requirements, as tested by the method and in the manner prescribed; provided that if the Antigua and Barbuda Bureau of Standards has issued standards covering any subject matter that is covered under this Act or its implementing regulations, the regulations promulgated by the Minister shall prevail in the event of any inconsistency or conflict.

(2) A person shall not manufacture, import, distribute at wholesale, or sell a tobacco product that —

- (a) has a characterizing flavour or is represented or is packaged or labelled as having a characterizing flavour or being flavoured;
- (b) contains a flavouring in any component or any technical feature allowing modification of the smell or taste of the tobacco product or its smoke intensity;
- (c) contains one or more additives with properties associated or likely to be associated with energy or vitality, a health benefit, or reduced health risk, such as but not limited to, amino acids, caffeine, taurine and other stimulants, vitamins, and minerals, or is or is packaged or and labelled as containing any such additives or as having such properties;
- (d) contains an additive having colouring properties for emissions or for a component, other than when used for —
 - (i) a trademark, subject to the Minister's authority to restrict or prohibit the display of a trademark;
 - (ii) whitening plug wrap paper; or
 - (iii) making tipping paper brown or bronze or creating a cork pattern on the tipping paper; or
- (e) is represented or suggested, including through words, images, pictures, symbols, scents, or other signs or signals, as—

- (i) having a characterizing flavour;
- (ii) being flavoured;
- (iii) containing any of the additives described in (c) or having any of the properties described in (c).

22. Product information to be submitted to the Minister

(1) Tobacco manufacturers and importers shall submit to the Minister annually reporting of tar, nicotine and carbon monoxide levels only in accordance with the ISO methodology and within an ISO accredited laboratory.

(2) In submitting the information required in (1), tobacco manufacturers and importers shall use the testing methods, including methods to assess conformity with product standards, prescribed in accordance with the ISO methodology and within an ISO accredited laboratory.

(3) The Chief Executive Officer or Chair of the Board of the tobacco product manufacturer or importer submitting the information shall verify the information contained in the submission and, as part of the submission, attest to the accuracy and completeness of the information supplied.

(4) The Minister shall make information from these submissions readily accessible to the public while taking reasonable action necessary to prevent disclosure of any information that may be protected by law and any information that may be misleading or promotional in nature.

PART V

PROTECTING TOBACCO CONTROL POLICIES FROM THE COMMERCIAL AND OTHER VESTED INTERESTS OF THE TOBACCO INDUSTRY

23. Protecting tobacco control policies

Government authorities and natural persons working in or for government with responsibility for tobacco control shall protect tobacco control policy development and implementation from the commercial and other vested interests of the tobacco industry, after evaluating the pros and cons with relevant stakeholders. At a minimum, this shall include-

- (a) limiting interactions with the tobacco industry only when and to the extent strictly necessary to enable effective regulation of the tobacco industry and tobacco products;
- (b) not participating in, supporting, endorsing, or accepting—
 - (i) any education, instruction, or training provided or funded in whole or part by the tobacco industry;
 - (ii) any partnership of any kind with the tobacco industry;

- (iii) any non-binding or non-enforceable agreement or tobacco industry code of conduct in the place of legally enforceable tobacco control measures;
 - (iv) any tobacco industry involvement in any manner in an initiative, campaign, program, or activity directly or indirectly related to tobacco control policy or public health, including but not limited to, any youth access or education program, public education campaign, or other initiative; and
 - (v) any other act or activity that may be prescribed in regulations or that could render tobacco control policy development or implementation vulnerable to the commercial or other vested interests of the tobacco industry;
- (c) refusing any voluntary financial or other contribution of any kind, including any gift, favour, or perquisite, from the tobacco industry, and making widely publically accessible information on any offer of contribution from the tobacco industry; provided that a contribution from the tobacco industry resulting from legal requirements or settlement of litigation shall not be considered a voluntary contribution;
- (d) preventing and managing any tobacco-related conflicts of interest, including with respect to persons coming into government service, during government service, and upon leaving government service;
- (f) not providing any incentive or privilege, such as grants, subsidies, loans, tax exemptions, reductions, or any other form of favourable tax treatment to any person to grow tobacco, establish or run a tobacco manufacturing, wholesale, import, export, or retail business, or to any phase of the production, research and development, or marketing process;
- (g) divesting from any tobacco holdings; and
- (h) any other means of protecting tobacco control policy development and implementation from the commercial and other vested interests of the tobacco industry as may be prescribed.

24 Financial contribution to public officials

A person in the tobacco industry shall not offer any unlawful assistance or advantage to a public official or engage in conduct which is contrary to section 4 of the Prevention of Corruption Act 2004.

25. Political Financial contribution

A person in the tobacco industry shall not offer or make to any political party, candidate, or campaign any financial contribution of any kind.

26. Adoption and implementation of policies

(1) The heads of relevant ministries, departments, and institutions in the Executive branch and the heads of relevant bodies in the House of Representatives, Senate, and the Judiciary should adopt, institute, and monitor policies, procedures, guidelines, standards of conduct as necessary or appropriate to ensure proper implementation and administration of the provisions of this Part and of FCTC Article 5.3 in accordance with the FCTC Article 5.3 Guidelines.

(2) The persons mentioned in (1) should collaborate to establish a mechanism or mechanisms by which information required to be made widely and readily accessible to the public pursuant to Sections 27 and 31(4) can be achieved, which should include but not necessarily be limited to, posting the information in a timely manner on a single government website having a prominently displayed link to this information or on their own websites having prominent links to such information.

27. Responsibility of the Minister-awareness raising and public information

The Minister shall provide all branches of government and the public with information, at a minimum, on the addictive and harmful nature of tobacco products and the need to protect tobacco control policies from the commercial and other vested interests of the tobacco industry, and of the strategies, tactics, and front groups and other surrogates used, openly or covertly, by the tobacco industry to undermine or subvert the development and implementation of effective tobacco control policies, including by making philanthropic contributions to public and private organizations.

28. Tobacco industry reports to the Minister

(1) Tobacco product manufacturers and importers shall submit periodic reports to the Minister containing the information specified in the Fourth Schedule to the extent applicable to the entity submitting the report and has been previously agreed with national stakeholders, including the tobacco industry, and that no proprietary, confidential information is made available to the general public.

(2) The Chief Executive Officer or Chair of the Board of the company shall verify the information contained in the reports required by (1) and, as part of the report, shall attest to the accuracy and completeness of the information supplied.

(3) Regulations shall prescribe the frequency, manner, format, method of reporting, verification procedures, additional content, if any, and all other details related to the reports.

(4) The Minister shall make information from the reports widely and readily accessible to the public; provided that the Minister shall take reasonable action necessary to prevent disclosure of any information that may be protected by law and any information that may be misleading or that may promote tobacco use, tobacco products, or the tobacco business making the report.

PART VI**PREVENTION AND CONTROL OF ILLICIT TRADE****29. Prevention and control of illicit trade of tobacco products**

The Ministry of Finance, in consultation with the Minister, shall enact effective regulations for the prevention and control of illicit trade in tobacco products.

PART VII**PENALTIES****30. Penalties and liabilities**

(1) Fines for violations of the various provisions of the Act shall be prescribed in regulations.

(2) A ticketing regime for the imposition and collection of fines may be established in regulations.

(3) In addition to, or in lieu of any fine specified for an act of non-compliance, the following penalties may be imposed, as applicable:

- (a) a warning for a first time offence;
- (b) licence suspension, cancellation, revocation or limitation;
- (c) removal from the premises of a person who smokes in violation of Section 9;
- (d) confiscation, forfeiture, and destruction of—
 - (i) any tobacco or advertising and promotion, including any items or materials containing tobacco advertising and promotion or tobacco sponsorship content;
 - (ii) any tobacco product package, including the products contained in the package, packaging and labelling materials, and any tobacco product itself that do not conform with the requirements of this Act or regulations;
 - (iii) any products that are in the form of or that imitate or resemble tobacco products, including e-cigarettes;
 - (iv) tobacco products, including separately sold components, that fail to conform with the product requirements under this Act or regulations;

- (v) tobacco products in the possession or under the control of a tobacco product manufacturer, importer, wholesaler, retailer, or persons working on their behalf, who do not possess a valid licence;
- (vi) tobacco products in the possession or under the control of a tobacco product manufacturer, importer, wholesaler, retailer, or persons working on their behalf, for which all applicable taxes and duties have not been paid, that otherwise have not legally entered the jurisdiction, that are counterfeit, or that are otherwise illicit.

(4) Where any person derives any monetary or financial benefit directly or indirectly from any act or omission that constitutes a violation under this Act, regulations, or other applicable law, such benefits gained shall be subject to forfeiture in addition to any other penalty authorized.

(5) Where a corporate person contravenes any provision of this Act or regulations, the corporate director or other corporate officer(s) who authorized or acquiesced in the act or who knew or, using due diligence, ought to have known of any impending commission or omission constituting contravention, that director or other corporate officer as the case may be, is deemed to have committed the offence and shall be held personally liable.

PART VIII

REGULATIONS

31. Regulations and orders

(1) In addition to the authority granted to the Minister under specific sections of this Act, the Minister may make regulations generally for effectively carrying out this Act or for otherwise fulfilling the objectives of the Act and the FCTC and its Protocols, in accordance with the FCTC Guidelines. This authority must be circumscribed by the provisions and requirements set out in this Act.

(2) The Minister may by Order published in the Gazette amend the Schedules.

PART IX

TOBACCO CONTROL AND NON-COMMUNICABLE DISEASES (NCD) FUND

32. NCD Fund

(1) A fund for tobacco control and for the prevention and control of non-communicable diseases shall be established from the following financial resources—

- (a) fines collected for any violations of the Act;

- (b) taxes and duties collected on tobacco products, and
- (c) any other specific duties that may be introduced.

(2) The operation of the Fund shall be transparent, in accordance with any requirements as may be prescribed in regulations. Annual audits shall be conducted and made readily accessible to the public.

(3) The Ministry of Finance, in collaboration with the Minister, shall have the authority to prescribe regulations for the implementation, operation, and monitoring of the Fund.

PART X

MISCELLANEOUS

33. Protection for employees

An employer shall not retaliate, discriminate, dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee or contractor as a result of that the employee or contractor having provided information, evidence, or testimony in relation to any actual or alleged violation of the Act.

34. Private right of action

(1) A mechanism shall be established for institutional channels through which any person may present a complaint to the government with respect to any violation of the Act or regulations. This mechanism shall also provide for the means by which the complainant shall receive notification of the government's action taken in response.

(2) Any person may commence a civil action against any person for violation of any provision of this Act, including for failure to fulfil a duty imposed under the Act. It shall not be necessary for the person instituting the action to prove harm as a result of the alleged violation or failure to fulfil a legal duty, or that he or she has any special interest in the action, save for the implementation and enforcement of the Act. An action instituted in good faith under the provisions of this Article shall be exempt from any filing fees

35. Repeals

The Tobacco Control Act Cap 430 is hereby repealed.

FIRST SCHEDULE

LICENCE FEES FOR BUSINESSES DEALING IN TOBACCO PRODUCTS

(SECTION 8)

The Minister may by Regulations, establish the licence fees for businesses dealing in tobacco products

SECOND SCHEDULE

ILLUSTRATIVE LIST OF PLACES WHERE SMOKING IS PROHIBITED

(SECTION 9)

- (a) public transportation terminals;
- (b) offices, factories, and other workplaces;
- (c) establishments including bars, restaurants and shopping malls, casinos;
- (d) clubs, except where an outdoor smoking area has been established thereon, pursuant to Section 9(2);
- (e) cinemas;
- (f) concert halls;
- (g) sports and recreational facilities;
- (h) places where public gatherings occur;
- (i) pool and bingo halls;
- (j) all government-owned or occupied facilities;
- (k) publicly owned facilities rented out for public events;
- (l) places specifically for use by children;
- (m) places of lodging;
- (n) restaurants, cafes, bars, pubs, dance clubs, casinos, and all other places where food or drink, gaming, or entertainment of any kind are provided except where an outdoor smoking area has been established thereon, pursuant to Section 9(2);

- (o) health care institutions and facilities;
- (p) educational and vocational facilities at all levels of instruction;
- (q) taxis, buses, trains, aircraft, watercraft, and any other public conveyance;
- (r) any other places or facilities that are accessible to the public, are places of collective use, or that are work places that do not include privately owned residences.

THIRD SCHEDULE

ILLUSTRATIVE LIST OF THE FORMS, MEDIA, AND MEANS OF TOBACCO ADVERTISING, PROMOTION, AND SPONSORSHIP PROHIBITED UNDER THE ACT

(SECTION 16)

- a) Communication through audio, visual or audiovisual means, such as print (for example, newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs), television and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (such as computer games, video games and online games), other digital communication platforms (such as the Internet, mobile phones, and mobile phone applications), and theatre and other live performance;
- b) Brand-marking, including at entertainment venues, retail outlets, and other public places or spaces, on vehicles, and on equipment or fixtures, such as by use of brand names, trademarks, trade insignias, logos, distinctive features, words, designs, emblems, images, sounds, colours or colour combinations, and any other indicia associated or likely to be associated with a tobacco product, tobacco manufacturer, importer, or wholesaler;

Sales of tobacco products through vending machines;

- c) Use of a tobacco brand name, trademark, trade insignia, logo, distinctive feature, words, design, emblem, image, sound, colour or colour combinations, and any other indicia associated or likely to be associated with a tobacco product, tobacco manufacturer, importer, or wholesaler on or in connection with a non-tobacco product, service, or item in such a way that the tobacco product and the non-tobacco product, service, or item are likely to be associated;
- d) Product placement, such as the inclusion of or reference to a tobacco product, service, trademark or indicia of the same in the context of communication in return for payment or other consideration;

- e)* Provision or offer of gifts or discounted products or items, such as key rings, T-shirts, caps, cigarette lighters or cases, CDs, other trinkets, or tobacco products, in connection with the purchase of a tobacco product;
- f)* Supply or offer of free samples of tobacco product, including in conjunction in connection with marketing surveys and taste testing;
- g)* Incentive promotions or loyalty schemes, such as redeemable coupons provided with purchase of a tobacco product;
- h)* Competitions associated with tobacco products or brand names, whether requiring the purchase of a tobacco product or not;
- i)* Direct targeting of individuals with promotional material, including informational material, using, for example, direct mail, telemarketing, consumer surveys or research, and person-to-person communications in public places such as bars, clubs and at public events;
- j)* Promotion of discounted tobacco products;
- k)* Payments or other contributions of any kind to retailers aimed at encouraging or inducing them, or having the effect or likely effect of encouraging or inducing them, to sell tobacco products, including retailer incentive programmes, such as those that provide rewards to retailers for achieving certain sales volumes;
- l)* Any promotional packaging and tobacco product features that are prohibited in regulations;
- m)* Payment or other consideration in exchange for the exclusive sale or the display of a particular tobacco product or particular manufacturer's product in a retail outlet or at a venue or an event;
- n)* Provision of financial or other support to events, activities, individuals or groups, such as sporting or arts events, individual sportspeople or teams, individual artists or artistic groups, welfare and other public interest organizations, government institutions or organizations, whether or not in exchange for publicity, attribution, or acknowledgement, including corporate social responsibility activities of any kind;
- o)* Provision of financial or other support to venue operators, such as retail outlets, restaurants, bars, pubs, clubs and other recreational venues, in exchange for building, renovating, or decorating premises to promote a tobacco product, or the use or provision of awnings, sunshades or other items that promote a tobacco product; and
- p)* Any other tobacco advertising, promotion, or sponsorship in any form or manner and by any method or means.

FOURTH SCHEDULE

REQUIRED INFORMATION IN TOBACCO INDUSTRY REPORTS TO THE MINISTER (SECTION 28)

1. Tobacco product revenues and profits, broken down by region and sector and, in the case of tobacco manufacturers, by wholesaler and retailer.
2. Locations, addresses and corporate names of all tobacco and non-tobacco subsidiaries, affiliates, joint ventures, partners, suppliers, and licensees.
3. Litigation in which the corporation or a subsidiary of the corporation, or the officers or directors of either, is or was at any time during the litigation a party to the litigation.
4. Any and all legal violations committed or prosecuted against the corporation or any of its officers or directors and the outcome or status of any prosecutions.
5. Corporate taxes owed and paid.
6. Information on tobacco product imports into and exports out of the territory, as specified in regulations, and import and export partners and locations.
7. All activities and actions attempted or undertaken by the reporting entity or any third party engaged by the reporting entity to influence the formulation or implementation of any tobacco control or public health policy.
8. Identification of lobbying firms, lobbyists, advocacy organizations, advocates, and all other persons, including the employees of the manufacturer, wholesaler, or importer, used for the purpose of taking or attempting action to influence the formulation or implementation of any tobacco control or public health policy, including issue advocacy advertising.
9. Itemization of all costs incurred and payments or other consideration of any kind made in regard to the activities specified in (i), dates the costs were incurred and the payments or other consideration were made, if any, and identification of the policy that was the subject of the lobbying.
10. Membership in any trade or business associations or membership organizations.
11. Payments or other consideration of any kind made to any trade or business associations or membership organizations, including not-for-profit associations, and the purpose(s) of any such payments.
12. Identification of any trade, business, or membership organizations, including not-for-profit associations, established or operating pursuant to any degree of direction from or control by the reporting entity.
13. Any conferences, seminars, workshops, training events, and other forums concerning tobacco control policy, tobacco products, or tobacco control organized, funded, or supported in some other way in whole or in part.

14. Any conferences, seminars, workshops, training events, and other forums concerning tobacco control policy, tobacco products, or tobacco control attended by any person employed by or acting on behalf of the reporting entity.

15. Any offers of or payments made to scientists, researchers, journalists, and any other persons as may be specified in regulations, and the purposes, amounts, and dates of the offers or payments.

16. Any payments, gifts, contributions of any kind, or perquisites offered or given, directly or indirectly, to any natural person working in, for, or on behalf of government having any responsibility for tobacco control, the dates and amounts offered or given, and the purposes.

17. Any contributions or payments of any kind offered or given to any government authority or natural person working in or for government, the amount, date, and the purposes of the contributions or payments.

18. Any charitable, philanthropic, civic, or similar contributions or payments of any kind offered or given to any person and the amount and date of the contributions or payment.

19. Any contacts or communications of any kind initiated and all interactions of any kind with any natural person working in, for, or on behalf of government having any responsibility for tobacco control, along with a description of the identity of the office holder, the date, the purpose, matters raised or discussed, and any outcome.

20. Any offers or payments made to any political party, candidate, campaign, or any person acting on their behalf, along with a description of the identity of the political party, candidate, or campaign, the date, and the amount.

21. Any other information as may be prescribed by the Minister.

Passed by the House of Representatives on
the 23rd July, 2018.

Passed by the Senate on the 1st August, 2018.

Gerald Watt Q.C.,
Speaker.

Osbert Frederick,
Vice President.

Ramona Small,
Clerk to the House of Representatives.

Ramona Small,
Clerk to the Senate.