

**TOBACCO PRODUCTS CONTROL ACT, 2006**

**No. 18 of 2006**

**VIRGIN ISLANDS**

**TOBACCO PRODUCTS CONTROL ACT, 2006**

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**No. 18 of 2006 Tobacco Products Control Act, 2006 Virgin**

**Islands**

**I Assent**

**(Sgd.) DANCIA PENN, OBE, Q.C. L. S.**

**Acting Governor**

**23rd December, 2006**

**VIRGIN ISLANDS**

**No. 18 of 2006**

An Act to regulate the promotion, distribution, and use of tobacco products and for connected matters.

[Gazetted 7<sup>th</sup> December, 2006]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I**

**PRELIMINARY**

Short title and commencement.

**1.** This Act may be cited as the Tobacco Products Control Act, 2006 and shall come into force on a date to be fixed by the Governor by Proclamation published in the *Gazette*.

Interpretation.

**2.** In this Act, unless the context otherwise requires,

"brand element" includes the brand name, trade-mark, trade-name, distinguishing guise, logo, graphics arrangement, design, slogan, symbol, motto, selling message, recognisable colour or pattern of colours, or any other indicia of product identification identical or similar to, or identifiable with those

used for any brand of tobacco product;

"distribute" means to sell, offer to sell, expose for sale, give, supply, exchange, convey, consign, deliver, furnish or transfer possession for commercial purposes, or to offer to do so, whether for a fee or other consideration or as a sample, gift, prize, or otherwise without charge;

"emission" means any substance or combination of substances that is produced as a result of a tobacco product being lighted;

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

"occupier", in relation to a public place, means a person in actual occupation thereof or having the management or control, or otherwise being in charge of, a public place, without regard to the title under which he occupies, manages, controls, or is otherwise in charge of, the public place;

"package" means a container, receptacle or wrapper in which a tobacco product is sold or displayed at retail, including a carton that contains smaller packages;

"prescribed" means prescribed by regulations made under this Act;

"promotion" means the practice of fostering, through various means, awareness of and positive attitudes toward a product, brand or manufacturer for the purpose of selling a product or products connected with a brand or manufacturer or encouraging use of a product or products connected with a brand or manufacturer, including through direct advertisement, discounts, incentives, rebates, free distribution, the promotion of brand elements through related events and the promotion of products through a public medium of communication;

"public place", except for the purposes of Part III, means a place to which the public or a section of the public has access;

"Regulations" means regulations made under section 11;

"smoke", in relation to a tobacco product, includes sniffing or sucking the product;

"tobacco" includes tobacco leaves or any extract of tobacco leaves;

"Tobacco Control Officer" means a person designated as a Tobacco Control Officer under section 9;

"tobacco product" means a product composed in whole or in part of tobacco,

including cigarette papers, tubes and filters;

"toxicity" means the quality, relative degree or specific degree of being toxic or poisonous;

"vending machine" means any means of distribution of tobacco products that is not mediated by a human being.

## **PART II**

### **PACKAGING, ADVERTISING, PROMOTION AND DISTRIBUTION**

Restrictions as to packaging.

**3.** (1) Subject to subsection (2), no person shall sell or import a tobacco product unless the package containing it displays, in the prescribed form and manner, including through an enclosed leaflet, if any, the information about

(a) the product and its emissions; and

(b) the health hazards and health effects arising from the use of the product or from its emissions.

(2) A requirement under subsection (1) shall not relieve a retailer of any other obligations or liabilities arising from other applicable legal norms to warn consumers of the risks of using tobacco products.

Restrictions as to advertising and promotion.

**4.** (1) No person shall promote or cause to be promoted by any other person, a tobacco product or a tobacco product-related brand element, except as provided for under this Act or the Regulations.

(2) Notwithstanding the provisions of subsection (1), no person shall promote or cause to be promoted a tobacco product or a tobacco product-related brand element

(a) in a manner that allows a consumer or purchaser of tobacco products to be deceived or misled concerning its character, properties, toxicity, composition, merit or safety;

(b) that does not display, in the prescribed form or manner, the

information required under section 3;

(c) through means of promotion that can be viewed from outdoors;

(d) by utilising any item other than a tobacco product, or any physical establishment or vehicle of any kind, which bears the brand name (alone or in conjunction with any other word), trade-mark, trade distinguishing guise, logo, graphics arrangement, design, slogan, symbol, motto, selling message, or recognisable colour or pattern of colours, of any brand of tobacco product, or which bears any other indicia of product identification identical or similar to, or identifiable with those used with or those used for, any brand of tobacco product;

(e) by utilising, for the purpose of promoting any athletic, musical, artistic or any other social or cultural event, the

brand name (alone or in conjunction with any other word), trade-mark, trade distinguishing guise, logo, graphics arrangement, design, slogan, symbol, motto, selling message, recognisable colour or pattern of colours, of any brand of tobacco product or any other indicia of product identification identical or similar to, or identifiable with those used with or those used for, any brand of tobacco product.

(3) Nothing in subsection (2)(e) shall prevent a person from sponsoring or causing to be sponsored any athletic, musical, artistic or any other social or cultural event, or any entry or team in any event, in the name of a corporation which manufactures a tobacco product, if the corporate name is registered and in use in the Virgin Islands one year prior to the coming into force of this Act and the corporate name does not include any brand name (alone or in conjunction with any other word), trade-mark, trade distinguishing guise, logo, graphics arrangement, design, slogan, symbol, motto, selling message,

recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with those used with or those used for any brand of tobacco product.

(4) No person shall offer or provide any direct or indirect consideration for the purchase of a tobacco product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, lottery or contest, or distribute a tobacco product without monetary consideration, or in consideration of the purchase of a product or service or the performance of a service.

Restrictions as to distribution.

**5.** (1) Subject to subsection (2), no person shall sell or offer to sell tobacco to a person who is under eighteen years of age and it shall not be a defence that the person appeared to be eighteen years or above.

(2) It shall be a defence to subsection (1) that the purchaser presented a prescribed form of identification showing his age and that there was no apparent reason to doubt the authenticity of the document or that it was issued to the person producing it.

(3) No person shall sell or offer to sell tobacco products except in a package containing the prescribed quantities or numbers of units.

(4) No person shall sell or offer to sell tobacco products in a place other than a prescribed place and, notwithstanding the generality of the aforesaid, no person shall sell or offer to sell tobacco products in any of the following places:

(a) health institutions, including hospitals, pharmacies and health clinics;

(b) educational institutions, including pre-primary, primary, secondary, and post secondary schools;

(c) recreational facilities, including parks, movie theatres and sports facilities.

(5) No person shall sell or offer to sell tobacco products unless the tobacco products are hidden from view of the general public at point of sale, provided that retailers may post signs indicating that tobacco products are available for sale, the specific products or brands available for sale, and their respective

prices if the brand elements are not visibly displayed.

(6) No person shall sell or offer to sell tobacco products by means of a display that permits a person to handle the tobacco product before paying for it.

(7) No person shall sell or offer to sell tobacco products through a vending machine, the mail or through the Internet.

(8) No person shall sell or offer to sell tobacco at retail unless signs bearing health warnings and other information are posted at the place in accordance with this Act or the Regulations.

(9) No person shall, at any place or premises in which tobacco or tobacco-related products are sold at retail, display any sign respecting the legal age to purchase tobacco-related products unless the sign is approved by the Minister.

### **PART III**

#### **USE**

Definition of "public place".

**6.** For purposes of this Part, "public place" means an enclosed public place, whether or not it is covered.

Prohibition of smoking in public places.

**7.** Subject to this Act, no person shall smoke tobacco or hold lighted tobacco in a public place, including any of the following places, or smoke tobacco or hold lighted tobacco within fifty feet of an entrance, exit or open window of any of the following places:

(a) offices and office buildings, including public areas, corridors, lounges, eating areas, reception areas, elevators, escalators, foyers, stairways, restrooms, amenity areas, laundry rooms and individual offices;

(b) health institutions;

(c) educational institutions;

(d) any premises in which children are cared for, for a fee;

(e) any means of transportation used for commercial, public or professional purposes and used by more than one person;

(f) public transportation terminals;

(g) retail establishments, including shopping malls;

(h) cinemas;

(i) concert halls;

(j) sports facilities;

(k) restaurants, bars, nightclubs and discotheques;

(l) pool and bingo halls;

(m) publicly owned facilities rented out for events;

(n) any other facilities, including beaches, accessible to the public; and

(o) any other facilities that employ paid personnel.

No smoking signs.

**8.** An occupier of a public place shall place in a prominent place, the prescribed signs that clearly indicate that the establishment is smoke-free.

## **PART IV**

### **MISCELLANEOUS**

Designation of Tobacco Control Officers.

**9.** (1) For the purpose of this Act, all Trade Inspectors, Labour Inspectors, Environmental Health Officers and Police Officers are designated as Tobacco Control Officers and shall, in the performance of their duties, carry with them a



certificate of such designation in such form as the Minister thinks fit.

(2) A Tobacco Control Officer may, at any reasonable time, to ascertain compliance with this Act and the Regulations, enter and inspect any place

(a) referred to in section 7;

(b) where tobacco is stored, packaged, labelled or sold;

(c) where anything used in the storage, packing, promotion, sale or testing of tobacco is to be found;

(d) where information relating to the storage, packing, promotion, sale or testing of tobacco is to be found.

(3) A Tobacco Control Officer shall have the following powers and no person shall deny, obstruct, or hinder a Tobacco Control Officer in the exercise of those powers:

(a) to examine, open, and test any equipment, tools, materials, packages or anything the Tobacco Control Officer reasonably believes is used or capable of being used for the packaging, labelling, storage or distribution of tobacco products;

(b) to examine and make copies of or from any books, documents, notes, files, including electronic files, or other records the Tobacco Control Officer reasonably believes might contain information relevant to determining compliance with this Act or the Regulations;

(c) to interview or question any occupier involved in importing, exporting, transporting, packaging, or distributing tobacco products;

(d) to seize and detain, or order the storage without removal or alteration

of any tobacco product the Tobacco Control Officer reasonably believes does not comply with this Act or regulations, upon providing the occupier or owner of the tobacco products, or if he or she is unavailable, any other person on the premises where the tobacco products are located, written notice of the seizure and detention and the grounds for it.

(4) If any tobacco product seized and detained pursuant to subsection (3)(d) is determined to meet the requirements of this Act or the Regulations, it shall be returned immediately to the premises from which it was seized and, if any tobacco product is determined not to meet the requirements of this Act or the Regulations, it may be confiscated and destroyed or subject to other disposal, as the court may order.

(5) A Tobacco Control Officer entering a place to inspect it under this section shall, on request, provide proof of identity and produce a certificate of designation signed by the Director of Health Services.

(6) A Tobacco Control Officer may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued by a Magistrate or a Justice of the Peace.

(7) No person shall hinder in any way the performance of the duties of a Tobacco Control Officer, mislead him by concealment or false statements, or refuse to provide him with any information or document to which he is entitled under this Act or the Regulations, or destroy any such information or document.

(8) During an inspection under this Act, a Tobacco Control Officer may seize any tobacco product or other thing by means of which or in relation to which the Tobacco Control Officer believes on reasonable grounds that this Act or the Regulations has been contravened.

Offences.

**10.** (1) A person who fails to comply with or contravenes any provision of this Act commits an offence and is liable to such penalties as shall be prescribed in the Regulations.

(2) Regulations made for the purposes of subsection (1) may provide different penalties for different categories of offences, including providing a mechanism for the payment of any fines by such means as may be prescribed in the

Regulations.

Regulations.

**11. The Minister may make regulations**

(a) respecting the content and format of information required under section 3 that is required to appear on packages and in leaflets;

(b) respecting information that shall not appear on packages;

(c) prescribing the form and manner of any health message to be required on promotional material or representations by any means;

(d) prescribing schedules for the implementation of promotional restrictions;

(e) prescribing acceptable forms of identification required under section 5(2);

(f) prescribing quantities of tobacco to be sold in a single package;

(g) prescribing places where tobacco products may be sold;

(h) prescribing required signage at point of sale;

(i) prescribing the content and format of any signs required to identify smoke-free establishments;

(j) prescribing the content and format of any signs required to identify designated smoking areas;

(k) respecting the powers and duties of

Tobacco Control Officers;

(l) respecting the taking of samples;

(m) respecting the procedure to be followed by a Tobacco Control Officer during an inspection;

(n) respecting the procedures to be followed during an inspection for seizure, and restoration of any tobacco product seized;

(o) prescribing penalties for non-compliance with, and contravention of, the provisions of this Act.

(p) generally as needed to carry out the purposes of this Act.

Passed by the Legislative Council this 14<sup>th</sup> day of November , 2006.

(Sgd.) V. INEZ ARCHIBALD, Speaker.

(Sgd.) ALVA MC CALL,

Acting Clerk of the Legislative Council.