

NATIONAL ASSEMBLY
Act No. 727

The President of the Republic of Nicaragua

Informs the country's inhabitants

That

THE NATIONAL ASSEMBLY

Has decreed the following:

TOBACCO CONTROL ACT

Chapter 1

General Provisions

Article 1. Purpose of the Act

This Act aims to establish regulations, bans and effective control mechanisms for tobacco consumption in all its forms, modalities or uses; reduce to a minimum the severe, harmful human health consequences of the consumption of and exposure to tobacco smoke; also, to establish effective measures to control advertising, promotion, sponsoring or any other promotional activity inducing tobacco consumption directly or subliminally, in order to prevent tobacco use by future generations.

Guidance is provided and the rights of non-smokers are safeguarded, without prejudice to the respect for the opinion of those who take on the habit of tobacco consumption, provided they do not do so in environments where non-smokers would be exposed or affected, or where environmental damage would be caused.

The provisions of this Act are of public interest and in line with the commitments the State of the Republic of Nicaragua has undertaken by signing and ratifying the World Health Organization Framework Convention on Tobacco Control and other treaties on the protection of the human rights of non-smokers.

Article 2. Objectives of the Act

This Act shall have the following objectives:

1. Reduce the consumption of tobacco and tobacco derivatives.
2. Comply with the commitments of the Republic of Nicaragua under the Framework Convention on Tobacco Control and other human rights treaties, and adopt measures reflecting international best practices on tobacco control.
3. Adopt measures to protect the health of present and future generations of the Nicaraguan population from the harmful effects, the consequences and the damage caused by tobacco consumption or exposure to tobacco smoke.
4. Reduce the health, social, environmental and economic consequences of tobacco consumption.
5. Protect all people from exposure to the harmful effects of tobacco smoke, through a comprehensive ban on smoking in indoor public places, workplaces, public transport and others.

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6. Prohibit the sale and consumption of tobacco or tobacco derivatives to minors, and require retailers to implement sales policies that guarantee compliance with this prohibition.
7. Regulate the advertising, promotion and sponsorship of tobacco and tobacco products.
8. Protect consumers from any misleading displays, such as packaging or labels, and require pictorial health warnings informing consumers about the risk and consequences of tobacco use and the harmful effects of second-hand smoking.
9. Establish provisions on inspections, control and monitoring mechanisms and measures guaranteeing the imposition of sanctions, in conformity with the provisions of this Act and its regulation.
10. Encourage and promote plans, programmes and projects aimed at effective prevention of tobacco use among potential consumers and at providing cessation support. The State, through the Ministry of Health, together with relevant international and non-governmental organizations, shall develop the coordination needed to achieve this objective.
11. Promote and support the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, as public health protection measures.

Article 3. Implementing Authority

The Ministry of Health shall be competent to implement this Act and its regulation, adopt tobacco control measures and provide information about the health consequences, the addictive nature and the deadly threat of tobacco consumption and exposure to tobacco smoke for human beings, especially pregnant women and children, and to provide pictorial and textual information about its effects, the practices of the tobacco industry and other information pertaining to the objectives of the Framework Convention on Tobacco Control and the objectives and purpose of this Act.

Article 4. Definitions

For the purpose of this Act,

Indoor workplace means a workplace without adequate natural or artificial ventilation where one or more workers engage in production activities that involve exposure to chemical, physical, biological, hygienic, health or psychosocial hazards.

Illicit trade means any practice or conduct prohibited and sanctioned by law which relates to production, shipment, receipt, possession, distribution, sale or purchase and importation, such as smuggling, counterfeiting or illicit possession of tobacco products, including any practice or conduct intended to facilitate such activity.

Framework Convention means the Framework Convention on Tobacco Control of the World Health Organization (WHO) signed by the Republic of Nicaragua on 7 June 2004 and ratified by the National Assembly on 24 February 2008.

Tobacco control means a range of strategies to reduce supply and demand of tobacco products and the harm caused by tobacco consumption and exposure to tobacco smoke, all of which aim to improve the health of the population by eliminating or reducing the consumption of tobacco products and exposure to tobacco smoke.

Indoor place means any space with a floor and a roof that is enclosed by walls or windows, regardless of the type of materials used and whether the structure is permanent or temporary. This definition also covers places that, without being fully enclosed, are not adequately ventilated owing to their design, construction or location.

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Indoor public place means any public or private enclosed place where the general public may enter, pass through or remain, regardless who owns it or is granted access.

Smoking means the act of inhaling, exhaling or handling a tobacco product that generates emissions.

Tobacco smoke means the particles generated by the combustion of any form of tobacco, or any other material used for smoking.

Tobacco industry means tobacco manufacturers, wholesale distributors and importers, and natural persons, associations and other entities representing them or acting on their behalf.

Public facilities means all state or municipal properties, buildings, offices or premises and those subject to their direct control or used by them.

Workplace means any place where one or more persons perform their work or render any type of service, and all attached or associated places commonly used by workers in the course of their employment or work activity.

Means of transport means any privately or publicly owned or controlled air, land, sea or other vehicle used to transport people from one place to another, generally in exchange for remuneration or commercial benefit.

Tobacco product means a product entirely or partly made of the leaf tobacco as raw material, which is manufactured to be used for smoking, sucking, snuffing or any other form of human consumption.

Tobacco advertising and promotion means any form of commercial communication, recommendation or action with the aim of promoting a tobacco manufacturer, tobacco product or tobacco use either directly or indirectly.

Tobacco sponsorship means any form of contribution to any event, activity or individual with the aim of promoting a tobacco manufacturer, tobacco product or tobacco use either directly or indirectly.

Tobacconist means a retail store specializing in the sale of tobacco products and smoking supplies, which account for at least 80 % of total sales.

Article 5. The National Council for Tobacco Control

The State, with the participation of civil society, shall implement the appropriate policies and legal measures to prevent, control and reduce tobacco consumption, tobacco addiction and exposure to tobacco smoke. Furthermore, it shall adopt the actions required to guarantee the effective implementation of these policies and measures in order to promote and protect public health.

The National Council for Tobacco Control, a deliberative body entrusted with the promotion of public policies for tobacco control shall be established in order to ensure compliance with this provision; it shall comprise one representative of each of the following institutions:

1. Ministry of Health (MINSA), which shall act as chair;
2. Nicaraguan Social Security Institute (INSS);
3. Ministry of Labour (MITRAB);
4. Ministry of Family (MIFAMILIA);
5. Ministry of Education (MINED);
6. National Council of Universities;
7. Cancer patients' associations; and
8. Related medical societies.

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The decisions of the Council shall be taken by simple majority; in the event of a tie, the chair of the Council shall hold the casting vote.

The Council shall be entitled to invite any natural or legal person from the public or private sector to participate without the right to vote, so they can offer their views and make contributions to the issue for which they were summoned through their representative.

The implementing authority of this Act, using its own budgetary resources, shall provide and guarantee the necessary facilities required for the functioning of this Council. The State of Nicaragua shall channel external resources in order to support and strengthen the Council in the discharge of its functions.

The mode of establishment, the administrative structure, the operational mechanism and other elements relating to the functioning of the Council shall be defined in the regulation of this Act and other special rules to be issued by the Council itself.

Chapter II

Smoke-free environments

Article 6. The prohibition of tobacco consumption

Smoking is prohibited in the following places:

1. Indoor public or private places;
2. In any sector of public or private indoor facilities or places such as: meeting rooms, religious centres, auditoriums, deliberation rooms or centres, theatres, cinemas or auditoriums, among others; including those used for recreational, educational, social, cultural, sporting or religious events.
3. In any facility of public or private health institutions, organizations or establishments such as hospitals or health centres, and generally in any place where health services are provided, in particular health care for pregnant women and newborns or child development centres.
4. In any facilities of public or private teaching or educational institutions, organizations or centres, be they pre-schools, primary or secondary schools, technical colleges, higher education centres or universities or any other type of education establishment.
5. In any facilities of public or private institutions, unless they are designated smoking areas that fulfil all the requirements established in this Act.
6. In customer service areas of public or private institutions.
7. Indoor workplaces or work premises.
8. In collective or selective transport vehicles on land, air or sea; and
9. In any place where the competent authorities deem that smoking poses a risk to public safety.

Article 7. Labelling and signposting

In the aforementioned places, signs of no less than 10 x 15 inches that are easy to read, printed in contrasting colours on a white background or any other to be specified by the Ministry of Health, indicating the prohibition to smoke must be displayed in a prominent position.

Article 8. Designated smoking areas

Certain outdoor or semi-outdoor places such as terraces, courtyards, pool areas, roof terraces, park areas or training camps attached to the places listed below may be designated as smoking areas:

1. Hotels, guesthouses and similar establishments;
2. Bars, restaurants;
3. Discotheques and casinos;
4. Airports; and
5. Tobacconists.

If these places do not have any outdoor or semi-outdoor areas, a special place shall be set up where smoking may be permitted provided they meet at least the following requirements:

1. They must be duly and visibly signposted;
2. They must be effectively enclosed by elements that separate them from the other rooms and must not be essential points of passage for non-smokers;
3. They should be equipped with smoke extractors and ventilation systems or other devices that ensure that the areas are duly ventilated;
4. In areas where smoking is permitted, access for minors shall be prohibited.
5. Designated smoking areas must be smaller than the area used by the general public.

Article 9. Responsibility of managers and owners

The owners or administrators of the places, properties, establishments, companies or institutions shall take the appropriate measures to ensure that their employees, persons under their supervision and the general public comply with this Act; to this end they shall put up signs and, if necessary, may seek the help of the National Police.

Article 10. Smoke-free environments

All persons have the right to live in a smoke-free environment and should notify the competent authorities or the institution established under the previous article of any breach of this provision without fear of reprisals.

Chapter III

Advertising, promotion and control of the marketing of tobacco products

Article 11. Advertising and promotion regulations

National and cross-border tobacco advertising, promotion and control of the marketing of tobacco products by natural or legal persons shall be conducted in strict compliance with the provisions established in this Act and its regulation.

Advertising or promotion of tobacco products in the mass media such as newspapers, radio or television, and on advertising signs or billboards, among others, is strictly prohibited.

Advertising shall only be permitted:

1. Inside of points of sale;
2. At the tobacconist's;

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3. In journals, publications and cinema films for adults; and
4. Person-to-person advertising directed to an informed adult audience subject to prior access control.

Tobacco product advertising must not contain any reference that may infringe on human integrity, dignity and intelligence, especially women, young persons and children.

Offers and promotions shall only be directed towards persons over 18 years of age, who must provide proof of their age by presenting an ID card or any other legally issued document that permits age verification.

The sale, distribution or free handing out of merchandise or objects carrying the name, logo or distinguishing feature of a cigarette brand is prohibited. Exempt are smoking supplies, such as lighters or ash trays, used by the smoking segment of the population or used in places where smoking is permitted pursuant to the provisions of this Act.

It is forbidden to promote, sponsor or advertise any event directly or indirectly related to sports competitions, teams, associations, confederations or leagues using the name of any cigarette, cigar or tobacco brand, or advertising the name of any member of the tobacco industry.

It is forbidden for any company producing, manufacturing or distributing cigarettes, cigars or tobacco derivatives to sponsor any type of sports event using the brand names of these products. It is also prohibited to sponsor cultural or recreational events directed at underage audiences or attended by minors.

Any person wishing to gain access to events organized for the purpose of promoting tobacco products or derivatives must provide appropriate evidence of having reached 18 years of age.

The organizer of such an event shall be answerable to be competent authorities if minors gain access. In the context of such events, the distribution of free samples shall be permitted, provided that strict access controls are in place to ensure that only adults may attend; the activity must be controlled and supervised by the event organizer or company.

Article 12. Prohibition of the sale or free distribution of tobacco products to minors

Any type of sale or free distribution of tobacco products or any other item used for smoking to minors is prohibited. To this end, the following measures shall be taken:

1. No store, shop or establishment selling tobacco products may display them in places that are directly accessible to the customer.
2. The shops, bars or general stores that sell tobacco products must place a clear and prominent sign of at least 10 x 15 inches inside the point of sale referring to the prohibition of tobacco sales to minors. These signs shall be provided free of charge by tobacco manufacturers or distributors.
3. It is forbidden to produce, import or sell sweets, snacks, toys or other objects shaped or designed like tobacco products that send subliminal messages encouraging tobacco consumption and may be appealing to minors.
4. No shopkeeper or other person selling tobacco products directly to the public may sell to anyone appearing underage, unless they can provide appropriate evidence of having reached 18 years of age such as an ID card, driver's license or passport. Any breach of this provision shall be liable to a fine imposed by the Ministry of Health.
5. The sale or free distribution of tobacco products in packages containing fewer than 10 units and the sale of individual cigarettes is prohibited.

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6. A comprehensive ban is imposed on the sale or free distribution of tobacco products to minors.
7. Minors may not be employed or used to sell or promote tobacco products.
8. It is forbidden to sell tobacco products in vending machines, via the Internet, by mail order or any other means that do not allow for verifying the purchaser's age.

Chapter IV

Packaging and labelling of tobacco products

Article 13. Truthful consumer information

Tobacco product labels, unit packets or packages or the tobacco products themselves may not promote the product by any means that are false, misleading or deceptive or likely to create a false impression about its characteristics, health effects, hazards or emissions. To this end, it is forbidden to use terms, descriptions, manufacturing or retail brands or graphic or any other type of symbols that create the false impression that a given tobacco product may be less harmful than another, for example expressions such as “low tar”, “light”, “ultra light” or “mild”.

Article 14. Requirements and conditions for public information

No one may sell any tobacco products unless the unit packets or outside sales labels comply with the following:

1. The warning: “Smoking damages your health” must clearly convey the dangers of tobacco use and be printed on one side of the package in clear, at least 14-point, bold Arial-type capital letters on white background.
2. The health warnings issued by the Ministry of Health within the narrow scope this Act shall be printed indelibly on both sides of the package. The package must also carry an image, together with a text or warning message, in accordance with the stipulation.
3. Every tobacco product package must be marked to curb illicit trade and the tracing and tracking of the product. This information must be printed prominently and indelibly on one side of the package and include the country of origin of the product, the manufacturing and expiry date, the batch and registration numbers, as well as the reference “For sale in Nicaragua only” and “suggested price in Cordobas”.
4. The information on nicotine, tar and carbon monoxide contents of tobacco products determined in accordance with the ISO method, which is recognized and accepted worldwide, must be printed indelibly on one side of the tobacco product package in clear, visible and legible letters. The implementing authority is authorized to corroborate this information in its laboratories or in regional reference laboratories.
5. Once this Act had been approved and entered into force, the Ministry of Health, on account of the members of the tobacco industry, shall issue an annual publication in any written national media providing information to the general public on the composite list of ingredients of tobacco products sold in Nicaragua, including the percentages of each ingredient.

Article 15. Health warnings

The Ministry of Health shall determine the health warnings referred to in paragraph 2 of the preceding article; there shall be a minimum of six different types of warning messages and pictorial warnings. The manufacturers and importers of tobacco products must ensure that these warnings are circulated in

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the domestic market during each rotation period and distributed proportional to the volume of packages, in accordance with the arrangements made by the implementing authority and shall:

1. Rotate at least once a year, i.e. a different set of warning messages issued by the Ministry of Health must be displayed during the subsequent 12 months rotation period;
2. Occupy fifty per cent (50 %) at least and 60 per cent (60 %) at most of the main surface area of both sides of the tobacco product and be printed on the package and not the disposable outside wrapping.
 - (a) The text of the warning or written message shall occupy forty per cent (40 %) of the surface area required for health warnings, be framed by a box, written in at least 14-point bold Arial-type white letters on black background or vice versa, in accordance with the provisions of the Ministry of Health.
 - (b) The images must occupy sixty per cent (60 %) of the space required for health warnings and should be printed in four different colours.
3. The warning must be printed on both sides of the package, parallel to the lower rim of the package.

Article 16. Warnings supplied by the Ministry of Health

Manufacturers and importers of tobacco may be requested to download the health warnings and messages from an electronic file provided by the Ministry of Health, which shall be delivered to the companies six months in advance, allowing for a three months transition period to replace the current pictograms by the new ones to be implemented.

Article 17. Visibility of the information

It is forbidden to use package materials or design features that partially cover, obscure, obstruct or in any other way reduce the visibility of the health warning or any other information required by this Act.

Chapter IV

Illicit trade

Article 18. Express prohibition

It is categorically prohibited throughout the national territory to trade in tobacco products whose unit packs or outside sales labels do not comply with the provisions of this Act. Any breach of this provision shall be punished with the confiscation of the product in question, without prejudice to any administrative or criminal sanctions imposed on the offender.

The Ministry of Health as the implementing body, with the assistance of the public security authorities and the Treasury, shall be responsible for verifying compliance with this provision.

Article 19. Control of tobacco products in transit

The competent authorities shall take the corresponding administrative and legal measures to facilitate effective documentation, monitoring and control the movement of tobacco products in transit.

Article 20. Non-exempt products

It is prohibited to sell tobacco products in any tax-free establishment, store or shop at land border stations.

Tobacco products may be sold tax free up to a maximum quantity of 500 grams per adult traveller in establishments, stores or shops located in airport terminals or international ports. It is also forbidden to

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import tobacco products without paying the taxes established by national taxation legislation. All of the above stipulations are based on this Act and national taxation legislation and are in compliance with chapter (b) article 6 of the WHO Convention on Tobacco Control.

Article 21. Confiscation and destruction of tobacco products

Any tobacco product confiscated on grounds of illicit trade, breach of the regulations on the content and emissions of tobacco products, intellectual property rights or noncompliance with tax provisions, customs regulations, or labelling regulations shall be destroyed or otherwise disposed of by the competent authorities or, failing that, by the authorities of the Ministry of Health. No responsibility shall fall to the State. Mechanical methods that are harmless to the environment shall be used, in accordance with the provisions of the regulation of this Act, for the destruction of the confiscated goods.

Chapter VI

Content of tobacco products and reporting requirements of the tobacco industry

Article 22. Verification content and emissions of tobacco products

The State of the Republic of Nicaragua, through the Ministry of Health, shall adopt and implement guidelines for testing and measuring the content and emissions of tobacco products, pursuant to the regulation on such contents and emissions. These guidelines shall be approved once the Conference of the Parties of the WHO Convention on Tobacco Control, in consultation with the competent international organizations, has issued an opinion on the matter, in accordance with the provisions of article 9 of the WHO Convention on Tobacco Control.

In order to comply with this provision, the State of Nicaragua shall provide the Ministry of Health with financial resources from the public treasury or sufficient external cooperation to facilitate the establishment of a specialized laboratory for this purpose, without prejudice to the use by the implementing authority of certified regional or international laboratories offering such services.

The Ministry of Health is authorized to monitor and verify the implementation of existing provisions on tobacco product design features, and to inspect any tobacco product in order to verify that it complies with the provisions of this article and other provisions of this Act and its regulation.

Article 23. Reporting of information to the implementing authority

The manufacturers and importers of tobacco products must submit annual reports to the Ministry of Health containing information on the content, emissions and design features of their tobacco products, in conformity with this Act and its regulation. Without prejudice to the aforesaid, the implementing authority may make a reasoned request at any time for any information required for the implementation of this Act and its regulation.

The manufacturers and importers must also provide information about their products: a list of the brands imported or exported over the course of the year, as well as new products and brands introduced during the year and a sample of the packaging of each brand. These reports shall be sent to and received by the Department for Health Surveillance.

Chapter VII

Sanctions

Article 24. Sanctions

The offences established in this Act shall be liable to administrative sanctions imposed by the Ministry of Health. Any fines shall be imposed in accordance with a staggered scale, commensurate with the gravity of the offence and the recidivism rate, without prejudice to any civil or criminal liability that may derive.

Article 25. Offences relating to advertising

When the offence concerns advertising, both the advertising company and the beneficiary of the advertisement shall be held accountable, the latter being understood as the owner of the brand or product advertised and the owner of the establishment or place where the advertisement is issued.

Article 26. Administrative sanctions and institution of criminal action

Any person feeling aggrieved by an act carried out in breach of the provisions of this Act and its regulation may lodge a complaint with the Ministry of Health in the case of offences attracting administrative sanctions such as warnings, fines and temporary or definitive closure of the premises. Any person considering him or herself aggrieved by an act of illicit trade pursuant to the provisions of this Act and the Criminal Code may lodge a complaint with the National Police or institute legal action directly before the public prosecutor.

Any illegally traded tobacco product shall be destroyed in conformity with article 21 of this Act. The equipment used for its manufacturing, transport and sale shall be confiscated and placed at the disposal of the competent authority. All actions may be initiated at the request of the party, or ex-officio.

Article 27. Order of priority of administrative sanctions

Once the recourse of warnings has been exhausted, further administrative sanctions shall be imposed in the following order:

1. A fine ranging from C\$ 500 (five hundred Cordobas) to C\$ 500 000 (five hundred thousand Cordobas) depending on the nature and gravity of the offence. The sanction scale and the specific amount of the fine shall be defined in the regulation to this Act. On the basis of the minimum and maximum fines established in this paragraph and the characteristics of the offender, the amounts shall be pegged to the US dollar.
2. Temporary suspension of the business license issued by the corresponding authorities in case of recidivism or non-payment of the fine.
3. Definitive closure of the premises, in which case any licenses granted to the establishment shall be null and void.

Chapter VIII

Final and Transitory Provisions

Article 28. Inter-institutional coordination

The Ministry of Health, in its capacity as the implementing authority, shall coordinate with the Office of the Public Prosecutor, the Treasury and the Ministry of Development, Industry and Commerce in order to guarantee the proper and effective application of the provisions established in this Act. Within a period not exceeding 12 months counting from the entry into force of this Act, the Ministry of Education and the National Council of Universities (CNU), in coordination with the Ministry of Health, shall include issues pertaining to the prevention and harmful consequences of the consumption

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of tobacco products in the curricula of all public and private education establishments at all levels, cycles and modalities.

Article 29 Destination and use of the fines collected

The Treasury shall establish a special fund with the fines obtained from offences committed under this Act and the proceeds from confiscated goods, where applicable. The resources of this fund shall be handed over to the Ministry of Health for the formulation and implementation of education and prevention plans, programmes and projects relating to tobacco consumption and the financing of cancer prevention and treatment programmes.

Article 30. Governing regulations

This Act shall be governed by the provisions of article 150, paragraph 10, of the Constitution of the Republic of Nicaragua.

Article 31. Abrogation

This Act abrogates Act No. 224 “Act on the Protection of the Human Rights of Non-smokers” published in the Official Journal No. 240 of 18 December 1996, and its regulation, Executive Decree No. 29-2000 published in the Official Journal No. 79 of 27 April 2000.

Article 32. Entry into force

This Act shall enter into force six months after its publication in any written media of nationwide circulation, without prejudice to its prior publication in the Official Journal.

Done in the meeting room of the National Assembly, in the city of Managua, on 29 June 2010. Ing. René Nuñez Téllez, President of the National Assembly, Dr. Wilfredo Navarro Moreira, Secretary of the National Assembly.