

TOBACCO CONTROL ACT, 2009

(Act No. 14 of 2009)

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TOBACCO CONTROL ACT, 2009

(Act No. 14 of 2009)

I assent

J. A. Michel
President

19th August, 2009

AN ACT to regulate the use, sale, manufacture, advertising and promotion of a tobacco product and to provide for connected matters.

ENACTED by the President and National Assembly.

PART I – PRELIMINARY

1. This Act may be cited as the Tobacco Control Act, 2009. Short title



Interpretation

2. In this Act —

“advertisement”, in relation to a tobacco product —

- (a) means a communication, an act or practice that is commercial; and
- (b) includes words, names, messages, mottos, slogans, letters, numbers, pictures, images, colours and any other graphics, sounds or auditory, visual or sensory matter, in whole or in part, through any media or other means.

that has the aim, effect, or likely effect of promoting a tobacco product, a manufacturer, an importer, or tobacco use;

“Board” means the National Tobacco Control Board established under section 18;

“child” means a person below the age of 18 years;

“enclosed”, in relation to a public place or workplace, means a place covered by a ceiling or roof or enclosed by one or more walls or sides, regardless of the type of material used, and whether the roof, walls or sides are temporary or permanent;

“export” includes re-export;

“hotel” means an establishment that provides lodging or sleeping accommodation with or without food and drink, to the public for hire, the rate of which is calculated on a daily basis, or for reward of any kind;

“Minister” means the Minister responsible for health and “Ministry” is construed accordingly;

“package” means a container, receptacle or wrapper

in which a tobacco product is sold or distributed;

“public place” includes —

- (a) an enclosed place which is open to the public or part of the public;
- (b) outdoor premises of —
 - (i) a health institution;
 - (ii) an educational institution; or
 - (iii) a children day care centre; or
- (c) any other prescribed premises or places;

“public transport” includes any publicly or privately operated mode of transport used for the carriage of members of the public, whether for hire or reward;

“prescribed” means prescribed by regulations;

“sell” includes offer for sale or expose for sale;

“smoking” includes the inhaling and exhaling of tobacco smoke, and holding of a lighted or heated tobacco product, or a device containing an ignited tobacco product which is producing any type of emission;

“smoking accessories” includes equipment or supplies intended for or used for smoking or for preparation thereof;

“tobacco product” means a product containing tobacco in any form;

“tobacco sponsorship” means a public or private contribution made to a person, a team or an event with the aim, effect or likely effect of promoting a tobacco

product, manufacturer, an importer, or tobacco use directly or indirectly;

“workplace” —

- (a) means a place occupied by an employer, usually frequented by a worker or a volunteer during the course of his or her employment, whether for remuneration or on a voluntary basis; and
- (b) includes the public area, corridor, lounge, eating area, reception area, elevator, foyer, staircase, rest-rooms, or any other common area attached to, forming part of, or used in conjunction with a work place within the meaning of paragraph (a); but
- (c) does not include a dwelling house occupied by an employer.

Administration
of Act

3.(1) The Minister is responsible for the general administration of this Act.

(2) The Minister may delegate to a person any power or duty imposed on the Minister by this Act, other than the power to make regulations or orders and this power of delegation.

(3) An act or thing done by a person under a power or duty delegated under the subsection (2) has the same force and effect as if it had been done by the Minister.

PART II – PROTECTION FROM EXPOSURE TO TOBACCO SMOKE

- 4.(1) A person shall not smoke a tobacco product —
- (a) in a public place;
 - (b) in an enclosed workplace; or

Prohibition of
smoking in
public place

- (c) in any public transport whether or not it is carrying a member of the public.

(2) Subsection (1) (a) does not apply to a bedroom in a hotel, but the owner of the hotel may prohibit or restrict smoking in such bedroom.

5. An owner of a public place or an enclosed workplace shall clearly display notices in the prescribed form, indicating that smoking is prohibited in the public place or enclosed work place.

Display of
notices

6.(1) An owner of a public place or an enclosed workplace shall take reasonable steps to prevent a person from smoking in that public place or enclosed workplace.

Duties of
owners

(2) For the purpose of subsection (1), “reasonable steps” means —

- (a) to ask the person to stop smoking;
- (b) to ask the person to leave; or
- (c) to call the police.

(3) A person who refuses to stop smoking or to leave the public place or enclosed workplace when asked to do so by the owner pursuant to subsection (2) shall be removed by the police.

PART III – MANUFACTURE, IMPORTATION AND SALE OF TOBACCO PRODUCT

7.(1) A seller of a tobacco product shall display at his or her place of business a notice in the prescribed form, informing the public that it is prohibited by law to sell a tobacco product to a child.

Youth access
and minimum
age restriction

- (2) A person shall not —
- (a) send a child to buy,

- (b) sell to a child,
- (c) allow a child to sell,
- (d) give to a child, or
- (e) ask a child to light,

a tobacco product.

(3) It is not a defence to a charge under subsection (2) for an accused person to prove that —

- (a) the child presented a form of identification indicating his or her age and that there was no apparent reason to doubt the authenticity of the form of identification; or
- (b) the child appeared to be not less than eighteen years of age.

8. A person shall not sell a tobacco product through an automatic vending machine, through the post or through the internet, or by other means through which the age of the purchaser cannot be reliably ascertained.

9. A person shall not sell a tobacco product in a manner whereby it may be handled without his or her assistance before a sale is made.

10. A person shall not manufacture, import or sell a tobacco product that does not conform to the prescribed standards.

11. A person shall not manufacture, import, supply, display, distribute or sell any sweets, snacks, toys or other non tobacco products resembling a tobacco product.

12.(1) A person shall not manufacture, import, supply, display, distribute or sell a tobacco product —

- (a) unless its individual packaging and outer

Restriction on sale of tobacco product through vending machine etc

Restriction on handling of tobacco product prior to sale

Tobacco product to conform to prescribed standards

Prohibition on sale of "look alike" product

Labelling and packaging

packaging, including any packaging that may be visible at retail —

- (i) bear in the prescribed form, the written or pictorial warnings or any other tobacco control messages;
 - (ii) bear in the prescribed form a statement of the constituents and emissions of the tobacco product; and
 - (iii) bear any other prescribed information; or
- (b) if its individual packaging and outer packaging, including any packaging that may be visible at retail —
- (i) contain any labelling that is; or
 - (ii) other characteristics that are,

misleading, deceptive or likely to create an erroneous impression about the characteristics, health effects, hazards or emissions of a tobacco product, including any term, descriptor, trademark, figurative, colour, shape, or any other sign that directly or indirectly creates a false impression that a particular tobacco product is less harmful than other tobacco products.

(2) The size of the warnings or messages referred to in subsection (1)(a)(i) is to cover at least 50 per cent of the main display areas of the package containing the tobacco product.

(3) The text of the warnings or messages referred to in subsection (1)(a)(i) and the statement and information referred to in subsection (1)(a)(ii) and (iii) respectively, shall be printed in Creole, English or French.

(4) For the purpose of subsection (1)(b), a term includes the use of the expression "light", "ultra-light" or "mild".

Anti-smuggling
and reporting

13. Every manufacturer, importer or exporter of tobacco or tobacco products shall submit to the Board at the end of each quarter, a report in the prescribed form for that quarter, containing the following information for each brand or type of tobacco or tobacco products —

- (a) the amount and selling price of such products that have been manufactured or imported for sale in Seychelles or exported from Seychelles;
- (b) the country from which such products were imported, trans-shipped or to which they were exported;
- (c) the date of import into or export from Seychelles of such products;
- (d) copies or samples of all outer packaging of a unit for sale of such products, if they are different from those submitted before;
- (e) the measures of prescribed constituents and emissions using prescribed testing methods;
- (f) any other prescribed particulars.

PART IV— ADVERTISING, SPONSORSHIP AND PROMOTION OF TOBACCO PRODUCT

Restriction on
advertising

14.(1) Subject to subsection (2), a person shall not engage or participate in any form of direct or indirect domestic or cross-border tobacco sponsorship, advertisement and promotion.

(2) Subsection (1) shall not apply to—

- (a) a price list of a prescribed size and form displayed inside a prescribed location, on premises licensed to sell or deal in tobacco products and smoking accessories:

Provided that not more than one price list is displayed; or

- (b) trade publications provided to employees, stakeholders or investors of the tobacco industry not intended to encourage and that do not have the effect or likely effect of encouraging the purchase or use of a tobacco product.

15. A person shall not provide or take part in providing a tobacco product as an incentive, a commercial gift, a sample, a bonus, or a prize in any game, lottery or contest or as a reward.

Tobacco product
as incentive,
game etc.
prohibited

16. A person shall not use any name, logo, brand name, colour, graphic, or other indicia associated or likely to be associated with a tobacco product, tobacco manufacturer or seller on a non tobacco product, item or service in whole or in part.

Prohibition
of brand
stretching

17. A person shall not use or display any logo, slogan, trademark or brand name of a non tobacco product or service on a tobacco product.

Prohibition of
reverse brand
stretching

PART – V NATIONAL TOBACCO CONTROL BOARD

18. The Minister shall establish a National Tobacco Control Board.

Establishment

19. The Board is responsible for advising and making recommendations to the Minister on matters relating to tobacco control.

Object

20.(1) The Board consists of the Public Health Commissioner and not more than 9 other members, who have experience in the field of tobacco control, public health, consumer protection and other related fields, and an executive secretary.

Composition
and
appointment

(2) The members of the Board are to be appointed by the Minister, and the Minister shall cause a notice of their names to be published in the *Gazette*.

(3) The Public Health Commissioner is to be the Chairperson of the Board and the members of the Board shall elect from among themselves a vice-chairperson.

(4) Each member of the Board is to be appointed for a term of 2 years and is eligible for re-appointment.

(5) A person shall not be appointed as a member of the Board, if the person is —

- (a) a representative of, or a person involved in the business of manufacturing, importing, exporting or selling of tobacco or tobacco products or smoking accessories;
- (b) an owner or shareholder or representative of, or has any other interest in, an entity that manufactures, imports, exports or sells tobacco or tobacco products or smoking accessories.

Tenure

21.(1) A member of the Board may resign by giving a signed notice of resignation to the Minister.

(2) The Minister may remove a member of the Board from office upon being satisfied that the member —

- (a) is, for whatever reason, permanently incapable of performing the functions of a member;
- (b) has been absent, without leave of the Board, from 3 consecutive meetings of the Board; or
- (c) has neglected the duties of a member.

Function

22. The functions of the Board are —

- (a) to monitor and report to the Minister on trends and patterns in the use of tobacco or tobacco products;
- (b) to review the implementation of this Act and recommend to the Minister such amendments as it considers to be necessary or appropriate;
- (c) to develop a national programme for tobacco control and make recommendations to the Minister for its implementation;
- (d) to coordinate activities on tobacco control among ministries, government departments and other relevant bodies;
- (e) to prepare reports to the Conference of the Parties of the Framework Convention on Tobacco Control as is required by the Convention and its protocols; and
- (f) to perform any other functions as may be given to it by Minister.

23.(1) The Board may meet as often as is necessary for the performance of its functions under this Act.

Meeting

(2) The Chairperson shall preside at all meetings of the Board at which he or she is present and the vice-chairperson shall preside in the absence of the Chairperson.

(3) A quorum for a meeting of the Board is 5 members.

(4) The Board shall regulate its own proceedings.

(5) Each member of the Board has one vote and decisions of the Board are by simple majority of votes cast by the members present at a meeting and in the event of an equality of votes, the Chairperson or vice chairperson has a casting vote.

(6) The validity of a proceeding of the Board is not affected by a vacancy among its members or a defect in the appointment of a member.

Act done in
good faith

24. A member of the Board is not liable for damages for anything done or omitted to be done in good faith in the performance or purported performance of the member's functions under this Act.

PART VI – MISCELLANEOUS

Offences and
penalties

25.(1) A person who smokes in contravention of a provision of section 4(1) commits an offence and is liable —

- (a) on conviction to a fine of not less than R1000 and not more than R5000, on first conviction;
- (b) on conviction to a fine of not less than R5000 and not more than R8000, on second conviction; and
- (c) to imprisonment for a term not exceeding 3 years, on subsequent convictions.

(2) A person who contravenes section 5, 6(1), a provision of section 7, 9, 11, 13, 14(1), 15, 16 or 17 commits an offence and is liable —

- (a) on conviction to a fine of not less than R5000 and not more than R10000 or imprisonment for a term not exceeding 2 years, on first conviction;
- (b) on conviction to a fine of not less than R10000 and not more than R15000 or imprisonment for a term not exceeding 3 years, on second conviction; and
- (c) on conviction to a fine of not less than R15000

and not more than R20000 and imprisonment for a term not exceeding 3 years, on subsequent convictions.

(3) A person who contravenes section 8, 10, or a provision of section 12 commits an offence and is liable on conviction to a fine of R100000 or imprisonment for a term not exceeding 3 years and for a second or each subsequent offence to a fine of R150000 and imprisonment for a term not exceeding 3 years.

26. Where a person is convicted of an offence under section 10, 11 or a provision of section 12, a Court may, in addition to imposing a penalty, order the confiscation and destruction of any tobacco product or article, which is the subject matter of the offence.

Confiscation of
products or
articles

27. The Minister may make orders and regulations regarding —

Regulations

- (a) the requirement that the relevant authority sets the standards and testing procedures and methods for tobacco products or otherwise provides for testing of such products to ensure compliance with this Act;
- (b) the inspections of any public place, public transport, enclosed workplace or any other place to which this Act applies for purposes of enforcing the provisions of this Act;
- (c) the content of the health warnings, messages and statements required to be disclosed or printed on or in tobacco packages and the manner in which they are to be displayed;
- (d) constituents and emissions required to be disclosed in reports to the Minister and other information required to be so reported;

- (e) other places and premises where smoking is prohibited;
- (f) the imposition of spot fines;
- (g) the implementation of provisions of international conventions and protocols relating to tobacco control to which Seychelles is a party;
- (h) the number of cigarettes to be contained in a package for the purpose of manufacture and sale.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on the 16th June, 2009.



Veronique Bresson
Clerk of the National Assembly