



# TOBACCO CONTROL (AMENDMENT) ACT 2004

No. 9 of 2004

## AN ACT TO AMEND THE TOBACCO CONTROL ACT 2000

I assent,  
TAUFA'AHAU TUPOU IV,  
23rd August, 200

[3rd August, 2004]

**BE IT ENACTED** by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1.
  - (1) This Act may be cited as the Tobacco Control (Amendment) Act 2004.
  - (2) The Tobacco Control Act 2000 is in this Act referred to as the Principal Act.
2. Section 2 of the Principal Act is amended by inserting the following definitions in the correct alphabetical order —

““additive” means a substance that forms part of a tobacco product that is not cured tobacco leaf and includes —

  - (a) a substance forming part of the product that has been derived or refined from tobacco leaf (whether cured or not); and
  - (b) any substance that is introduced into a tobacco product during processing, manufacturing, or packaging, including, as applicable,

those contained in the paper, filter, portion pouch or similar part of the tobacco product;

“constituents” in relation to tobacco products intended for smoking, means the chemicals found in the product itself and in the smoke emitted from the product, and in relation to smokeless tobacco products, the chemicals inherent in the tobacco itself;

“distributor” means a person that is in the business of selling or distributing tobacco products (but who does not sell tobacco products by retail) and includes a manufacturer or importer of tobacco products;

“emissions” means the smoke, and the constituents in the smoke, emitted from a tobacco product that has been ignited;

“exporter” means any person that sends, or arranges for tobacco products or raw tobacco to be sent from Tonga to a point outside Tonga;

“health warning” means a message or statement about the health effects of tobacco use, the benefits of quitting smoking, strategies for quitting smoking, and any other matter related to tobacco and health prescribed by regulations made under this Act;

“importer” means any person who brings tobacco products or raw tobacco into Tonga for the purpose of distribution or sale;

“licensed premises” means any premises, or any part of any premises, on which liquor may be sold according to law;

“loose cigarettes” means cigarettes that are not contained in a package;

“loose tobacco” means tobacco, prepared for smoking in hand rolled cigarettes or in a pipe, which is not contained in manufactured cigarettes or sealed manufactured packets intended for sale in its entirety;

“manufacturer” means any person that manufactures, fabricates, produces, processes, packs or labels tobacco products, and includes any entity that is associated with the manufacturer, including an entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

“Ministry” means the Ministry of Health;

“other message” means, in relation to messages on tobacco packaging, information relating to the social, economic, cultural or other effects of tobacco use or exposure to tobacco smoke, or advice on avoidance of harms associated with tobacco use or exposure;

“retailer” means a person who sells tobacco products to members of the public.”

3. Section 3 of the Principal Act is amended by deleting the full stop at the end of subsection (2)(b)(iii) and substituting it with a semi-colon and inserting new subsections (2)(c) and (2)(d) as follows:
    - “(c) the placement, inside a retailer's place of business, of price notices indicating the tobacco products available for purchase within that place with health warning and price notices; or
    - (d) the display of tobacco products inside a retailer's place of business.”
  4. Section 4 of the Principal Act is amended by —
    - (i) renumbering current section 4 as subsection (1);
    - (ii) inserting, in the English version only, “of” after “free sample”; and
    - (iii) inserting a new subsection (2) as follows —
      - “(2) Any person who, in connection with the sale of a tobacco product, or for the purpose of promoting the sale of a tobacco product, supplies to the purchaser of a tobacco product or any other person —
        - (a) a prize, gift or other benefit;
        - (b) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for a prize, gift or other benefit (whether the entitlement or qualification is absolute or conditional); or
        - (c) any thing which, or a copy or facsimile of which, is a necessary prerequisite to participation in, or is likely to confer an advantage in, any game, contest or other activity in which a participant may become entitled to, or may qualify for, a prize, gift, or other benefit;
- commits an offence.”
5. The Principal Act is amended by inserting, after section 5, a new section 5A as follows —

“5A.

  - (1) For the purposes of this provision, non-tobacco products include but are not limited to such items as clothes, caps, bags, umbrellas, ashtrays, matches, lighters, coasters, dishes, sporting equipment, personal items and similar items.
  - (2) Any person who —
    - (a) advertises, displays for sale or distribution, sells, or distributes any non-tobacco product that contains any writing, picture, image, graphic, message, or other matter, in whole or part, that is commonly identified or associated with, a tobacco product, brand, or seller;

- (b) displays any name, writing, picture, image, graphic, message, or other matter, in whole or part, that is commonly identified or associated with, or is likely or intended to be identified or associated with a tobacco brand, or seller on a building, such as a club, restaurant, stadium or other place which is not primarily a business that manufactures or sells tobacco products; or
  - (c) uses the brand name, trademark or other sign, symbol, logo, or similar visual matter, in whole or in part, commonly associated with a non-tobacco product on a tobacco product;
- commits an offence.”

6. Section 6 of the Principal Act is deleted and substituted with the following —

**“Packaging and labelling requirements**

**6.**

- (1) Subject to section 6A of this Act, any person who sells, distributes, displays for sale or distribution, imports or exports, any tobacco product that is not packaged and labelled in a manner that complies with all requirements of this Act and with any regulations made under this Act commits an offence.
- (2) Every packet and package of tobacco sold in Tonga, and any outside packaging and labelling of such tobacco products, shall carry health warnings, health information or other messages, which —
  - (a) shall be rotated so that a range of messages are displayed on all tobacco brands and brand variants;
  - (b) are large, clear, visible and legible; and
  - (c) shall take up a minimum of 30 percent of the principal display areas of tobacco packets and packages.
- (3) Every packet and package of tobacco sold in Tonga may carry health warnings, health information or other messages that are in the form of, or include, pictures or pictograms.
- (4) All tobacco products imported for sale, manufactured for sale, or sold in Tonga shall carry a statement that the product is intended for sale in Tonga.

**Other acceptable standard**

**6A.**

- (1) For the purposes of this section “substantially to the same effect” means warnings that substantially meet the standard set out in sections 6(2), 6(4) and 7B.

- (2) Notwithstanding section 6 of this Act, tobacco products that are packaged or labelled substantially to the same effect as the requirements made under this Act may be imported for sale provided that the Ministry has issued written confirmation that the packaging and labelling of the imported tobacco products is substantially to the same effect as the packaging and labelling required under this Act.
  - (3) No person who manufactures or packages tobacco products in Tonga for sale in Tonga may rely on the exception in subsection (2).”
7. Section 7 of the Principal Act is deleted and substituted with the following —

**“Constituent and additive disclosures**

7. Any person who sells, distributes, displays for sale or distribution, imports, or exports any tobacco product that does not have, permanently affixed on its package, or permanently affixed on its individual wrapper in the case of a cigar, a disclosure of the following —

- (a) a list of the product's harmful constituents;
- (b) the emissions of the product; and
- (c) the product's additives;

commits an offence.

**Package inserts**

7A. Any person who sells, distributes, imports, or exports any tobacco product where that product's package does not contain package insert displaying information, including health warnings, in the form and manner prescribed by regulations made under this Act commits an offence.

**Misleading labelling prohibited**

**7B.**

- (1) Any person who packages or labels a tobacco product in a manner that allows a consumer or purchaser of tobacco products to be deceived or misled concerning its characteristics, properties, toxicity, composition, merit or safety commits an offence.
- (2) Any person who sells, distributes, or displays for sale or distribution, imports, or exports any tobacco product that displays any words, terms, markings or other identifiers on its package or label that are prescribed by regulations made under this Act as being misleading commits an offence.

- (3) Any requirements arising from this section do not exempt a manufacturer, importer or retailer of tobacco products of other obligations or liabilities to warn consumers of the risks of using tobacco products.”
8. The Principal Act is amended by deleting the heading of Part IV and replacing it as follows —
- “TOBACCO PRODUCT REGULATION AND TESTING”.**
9. Section 8 of the Principal Act is amended by adding the following new section 8A, 8B and 8C as follows —

**“Control on the content of tobacco products**

**8A.**

- (1) Any person who imports for sale, distributes for sale or sells any tobacco product that does not comply with regulations made under this Act setting standards for the manufacture of tobacco products, commits an offence.
- (2) Regulations relating to the manufacture of tobacco products may be made to —
- (a) prescribe the amount of a substance that may be contained in tobacco products or their emissions;
  - (b) prescribe substances that may not be added to tobacco products; and
  - (c) prescribe product design standards to reduce the harmful effects of tobacco products and to reduce their appeal to young people.

**Testing required**

**8B.**

- (1) In this section “product” means anything that is a tobacco product of any kind.
- (2) This section applies to each product prescribed for the purposes of this section by regulations.
- (3) Any manufacturer or importer of a product to which this section applies who does not in each year conduct, in accordance with regulations, made under this Act —
- (a) a test for the additives or constituents of each brand of the product sold by the manufacturer or importer, and the respective quantities of those additives or constituents; and
  - (b) if the product is intended to be smoked, a test for the constituents of the smoke of each brand of the product sold

by the manufacturer or importer, and the respective quantities of those constituents;

commits an offence.

- (4) In addition to the annual test required by subsection (3), the Ministry may, by notice in writing to the manufacturer or importer of a product require a further test to be conducted.
- (5) Further tests shall be conducted, in accordance with the regulations referred to in subsection (3) —
  - (a) in a laboratory nominated by the Ministry; and
  - (b) at the expense in all respects of the manufacturer or importer.
- (6) In any year, the Ministry shall not require further tests under subsection (4) in respect of more than 10% of the brands of products to which, subsection (3) applies sold by a particular manufacturer or importer.
- (7) Any person who fails to comply with a notice made under subsection (4) commits an offence.

#### **Report of constituents, additives, and certain business information**

##### **8C.**

- (1) Every manufacturer, importer, and exporter of tobacco products shall submit to the Ministry annual reports and returns as prescribed by regulations made under this Act.
- (2) If required by regulations made under this Act, the information referred to in subsection (1) shall be made available to the public.
- (3) Any person who fails to comply with this section commits an offence.”

#### **10. Section 9 of the Principal Act is amended by —**

- (i) deleting “this section” in section 9(2) and substituting it with “subsection (1)”;
- (ii) deleting subsection (3) and replacing it with a new subsection (3) as follows —

“(3) Every person who sells by retail a tobacco product shall display clearly for the public to notice, in accordance with any regulations made under this Act, stating that the sale of tobacco products to people who are younger than 18 years is prohibited.”; and
- (iii) inserting a new subsection (4) as follows —

“(4) A person who contravenes subsection (1) or (3) is liable upon conviction to a fine not exceeding \$1,000.”

11. The Principal Act is amended by adding, after section 9, new sections 9A, 9B and 9C as follows —

**“Smoking Kills' signage at point**

**9A.**

- (1) Every retailer of tobacco products shall clearly display, in close proximity to where tobacco products are displayed for sale, a sign with the words 'Smoking Kills', in Tongan and English printed —
  - (a) in dark coloured words on a white background; and
  - (b) in type that is clear and legible, and of such a size and boldness that, subject to subsection (3) of this section, the words 'Smoking Kills' as nearly as possible take up the full area of the sign.
- (2) The sign shall be at least the area of 0.3 metre x 0.4 metre.
- (3) The sign may include the attribution 'Ministry of Health Warning' in Tongan and English, printed after the words 'Smoking Kills', provided that the print size of the attribution is no greater than one half the print size of the words 'Smoking Kills'.
- (4) A person who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding \$1,000.

**Other products associated with tobacco product**

**9B.** Any person who manufactures or sells any product designed for or likely to appeal to children or young people under the age of 18 years that evokes or is likely to evoke an association with a tobacco product or brand, including but not limited to candy cigarettes, toys in the shape of cigarettes or other tobacco products, and similar products, commits an offence.

**Restrictions on the sale of certain tobacco products**

**9C.**

- (1) Any person who —
  - (a) sells by retail; or
  - (b) offers for sale by retail —
    - (i) loose cigarettes; or
    - (ii) loose tobacco.commits an offence.
- (2) Any manufacturer, importer, distributor, or retailer who sells or offers for sale —
  - (a) cigarettes in a package that contains fewer than 20 cigarettes;  
or



- (b) tobacco in a package that contains less than 30 grams of tobacco,  
commits an offence.”

12. The Principal Act is amended by adding, after section 10 new sections 10A, 10B and 10C as follows —

**“Mail order and other methods of unsupervised sales prohibited**

**10A.** Any person who sells or seeks to sell a tobacco product through the mail or through any other means by which the age of the purchaser or recipient of the tobacco product cannot be verified commits an offence.

**Sales of tobacco products prohibited in certain places**

**10B.** Any person who sells or otherwise distributes tobacco products in any place where health care services are rendered or in any educational facility serving people under 18 years of age, or in any other place as may be prescribed by regulations commits an offence.

**Discounting of tobacco products**

**10C.**

- (1) For the purposes of this section the term “normal trade discount” means a discount below the price for which the product was purchased or produced by the person who is distributing or supplying the product to another, including any associated sales taxes, import duties or other government-imposed costs.
- (2) Any seller of tobacco products who —
  - (a) distributes any tobacco product;
  - (b) supplies any tobacco product to any person for distribution; or
  - (c) in the case of a retailer, supplies any tobacco product to any person for the purpose of that retailer's business —  
free of charge, or at a reduced charged greater than a normal trade discount, commits an offence.”

13. Section 11 of the Principal Act is amended as follows –

- (i) by renumbering current subsections (2), (3) and (4) as subsections (4), (5) and (6) and
- (ii) by inserting new subsections (2) and (3) before the renumbered subsection (4) as follows —

“(2) Notwithstanding subsection (1), an owner or operator of a place where health care services are rendered may permit smoking to take place in a designated area of that place, provided that —

- (a) no person is required to undertake his or her usual work duties in that designated area or in close proximity to that area; and
    - (b) the smoke from the designated area does not adversely affect any indoor or enclosed place.
  - (3) Notwithstanding subsection (1), the superintendent of any prison shall prepare a written policy on where smoking is and is not permitted in that prison, and the following provisions shall apply —
    - (a) the policy shall be based on the principle that employees who do not smoke, or who do not wish to smoke in their workplace, shall, so far as is reasonably practicable, be protected from tobacco smoke in the workplace;
    - (b) the policy shall be based on the principle that inmates who do not smoke, or who do not wish to smoke, in the prison shall, except where it is impracticable, be protected from tobacco smoke in the prison;
    - (c) any inmate who requests that he be secured in a cell in which smoking will not be permitted while he is there shall, unless it is impracticable, be placed in such a cell; and
    - (d) subject to paragraphs (a) to (c) of this subsection, the superintendent may designate any indoor or enclosed area used in common by inmates as an area in which smoking is permitted.”;
  - (iii) be deleting “subsection (3)” in the renumbered section 11(6) and replacing it with “subsection (5)”.
14. Section 23(2) of the Principal Act is amended by deleting “section 6, 7 or 8” and replacing it with “sections 6, 7, 7A, 7B, 8 or 8A”.

Passed by the Legislative Assembly this 3rd day of August, 2004.