



TOBACCO CONTROL ACT

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TOBACCO CONTROL ACT

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TOBACCO CONTROL ACT

AN ACT TO PROHIBIT ADVERTISING AND PROMOTION OF CIGARETTES AND OTHER TOBACCO PRODUCTS, TO REGULATE THE LABELLING OF TOBACCO PRODUCT CONTAINERS, TO RESTRICT THE NICOTINE AND TAR CONTENT OF CIGARETTES, TO PROHIBIT THE SALE OF TOBACCO PRODUCTS TO YOUNG PEOPLE, TO RESTRICT SMOKING IN PUBLIC PLACES AND ON PUBLIC TRANSPORT, AND FOR ANCILLARY PURPOSES¹

Commencement [1st September 2001²]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Tobacco Control Act.

2 Interpretation

In this Act, unless the context otherwise requires —

“**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;³

“amusement centre” means any building, structure, or any other such place, whether temporary or permanent and whether partially or completely enclosed, in or at which public amusement takes place and to which the public are admitted with or without payment;

“authorised officer” means a police officer or a person prescribed under section 14;

“cigarette” means any product which —

- (a) consist wholly or partly of cut, shredded or manufactured tobacco, or of any tobacco derivative or substitute, rolled up in a single wrap of paper; and
- (b) is capable of being immediately used for smoking;

“clinic” means any building used or intended to be used by a medical practitioner, dental practitioner or any other person for the diagnosis or treatment of persons suffering from, or believed to be suffering from, any disease and includes any such place operated by the Government;

“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;⁴

“container” includes a box, tin, packet, or carton but does not include any outer wrapper, cellophane or other transparent material;

“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;⁵

“emissions” means the smoke, and the constituents in the smoke, emitted from a tobacco product that has been ignited;⁶

“exporter” means any person that sends, or arranges for tobacco products or raw tobacco to be sent from Tonga to a point outside Tonga;⁷

“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;⁸

“hospital” means any building in which 2 or more patients are or may be maintained at the same time and includes any such place operated by the Government;

“**importer**” means any person who brings tobacco products or raw tobacco into Tonga for the purpose of distribution or sale;⁹

“**licensed premises**” means any premises, or any part of any premises, on which liquor may be sold according to law;¹⁰

“**loose cigarettes**” means cigarettes that are not contained in a package;¹¹

“**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;¹²

“**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;¹³

“**Minister**” means the Minister of Health;

“**Ministry**” means the Ministry of Health;¹⁴

“**office**” means a place in which a person is employed, directly or indirectly to do any clerical, administrative or professional work in connection with any business carried on by the occupier of that place;

“**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;¹⁵

“**public amusement**” means any game of any kind whatsoever provided for the public in which a member or members of the public may take part;

“**restaurant**” means any place or any part thereof, where the principal business is the serving of meals or refreshments to the public for consumption at such place, and includes any such room or area on a watercraft;

“**retailer**” means a person who sells tobacco products to members of the public;¹⁶

“**sell**” includes —

- (a) barter or exchange;
- (b) offer or expose for sale, barter or exchange;
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
- (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain;

“**smoking**” with its grammatical variations, means puffing or inhaling and expelling the smoke of any tobacco product and includes the holding of, or control over, any ignited tobacco product;

“**sports stand**” means any building or structure, whether temporary or permanent, which is partially or completely enclosed and which is used for the seating of members of the public, with or without payment, primarily to view any sporting contest, but does not include any such building or structure belonging to any club, association, institution or other body intended for the benefit primarily of its members;

“**tar**” means the Condensate Particulate Matter (CPM) which results from the ignition of any tobacco product;

“**tobacco product**” means any of the following —

- (a) tobacco in a form prepared for human consumption or use;
- (b) a cigarette or cigar or any other product the main or a substantial ingredient of which is tobacco and which is designed for human consumption or use; or
- (c) a product prepared for smoking that contains a herb or other plant matter, whether or not the product also contains tobacco;¹⁷

“**tobacco product advertisement**” means any words, whether written, printed, spoken, broadcast or telecast, including on film, video recording or other medium, and any pictorial representation, design, device, visual image, sign, symbol, trademark, brand name or company name, or part of a trademark, brand or company name, or a combination of 2 or more of the foregoing, used to encourage the use or to notify the availability or to promote the sale of any tobacco product or to promote smoking;

“**vending machine**” means a machine or device that is constructed to contain tobacco products and which can automatically retail any tobacco product upon the insertion of a coin, token or similar object into the machine or device;

“**watercraft**” means any vessel designed to float on water, whether or not it is suitable, adapted or used for transportation;

“**workplace**” means any indoor or enclosed area that is occupied by an employer and that employees usually frequent during the course of their employment; and includes any cafeteria, corridor, lift, lobby, stairwell, toilet, and washroom; and also includes any enclosed common areas and employer-provided vehicles normally used by employees.¹⁸

PART II - PROHIBITION OF ADVERTISING AND PROMOTION OF TOBACCO PRODUCTS

3 Prohibition of tobacco product advertisements

- (1) Any person who —

- (a) displays, exhibits, announces, broadcasts or telecasts, or causes or permits to be displayed, exhibited, announced, broadcast, or telecast or authorises the display, exhibition, announcement, broadcast or telecast to the public of, a tobacco product advertisement;
- (b) sells or distributes, or causes or permits to be sold or distributed, or authorises the sale of, any film or video tape, that contain a tobacco product advertisement;
- (c) distributes, or causes permits to be distributed, or authorises the distribution, to the public of any leaflet or document that is a tobacco product advertisement; or
- (d) prints or publishes, or causes or permits to be printed or published, or authorises the printing or publication, of a tobacco product advertisement in any printed publication, book, magazine, leaflet, handbill, newspaper or other printed matter intended for the public,

commits an offence.

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

- (a) a tobacco product advertisement in or on a container containing a tobacco product;
- (b) any tobacco product advertisement included in any book, magazine, or newspaper printed outside the Kingdom, or in any radio or television transmission originating outside the Kingdom, or any film or video recording made outside, unless —
 - (i) the principal purpose of the book, magazine, newspaper, broadcast, telecast, film, or video recording is the promotion of the use of a tobacco product;
 - (ii) the book, magazine, newspaper, film, or video recording is intended for sale, distribution, or exhibition primarily in the Kingdom; or
 - (iii) in the case of a tobacco product advertisement in any radio or television transmission, the advertisement is targeted primarily at a Tongan audience;
- (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;¹⁹ or
- (d) the notice referred to in paragraph (c) shall not be displayed so as to be visible from outside the retailer's place of business.²⁰

(3) Subsection (1)(a) applies to the display of tobacco products inside a retailer's place of business.²¹

4 Prohibition on giving of or distributing of free samples

- (1) Any person who, for the purpose of inducing or promoting the sale of any tobacco product, offers, gives or distributes to any person a free sample of the tobacco product, commits an offence.
- (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.²²

5 Prohibition on sponsorship

- (1) Any person who, under a contract, agreement, undertaking or understanding, whether or not legally binding, with another person, promotes or publicises, or agrees to promote or publicise —
 - (a) a tobacco product or a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or
 - (b) the name or interests of a manufacturer or distributor of a tobacco product (whether or not that manufacturer or distributor also manufactures or distributes a product other than the tobacco product) in association directly or indirectly with the tobacco product,in exchange for a sponsorship, gift, prize, reward, scholarship or like benefit given or agreed to be given by another person, commits an offence.
- (2) Any person who, under a contract, agreement, undertaking or understanding with another person, whether or not legally binding, gives or agrees to give any sponsorship, gift, prize, scholarship or like benefit in exchange for the promotion of, or an agreement to promote, a tobacco product or a name, interest, trademark or brand name of a tobacco product, commits an offence.

5A Non-tobacco products²³

- (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.

PART III - LABELLING OF TOBACCO PRODUCT CONTAINERS

6 Packaging and labelling requirements²⁴

- (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 per cent of the principal display areas of tobacco packets and packages.
- (3) Every packet and package of tobacco sold in Tonga shall carry health warnings, health information and other messages that are in the form of pictures or pictograms.²⁵

- (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.

6A Other acceptable standard²⁶

- (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 Constituent and additive disclosures²⁷

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.

7A Package inserts²⁸

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.

7B Misleading labelling prohibited²⁹

- (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.

PART IV - TOBACCO PRODUCT REGULATION AND TESTING

8 Restrictions on tar and nicotine content

- (1) The level of tar in any cigarette shall not exceed 15 milligrams and the level of nicotine shall not exceed 1.5 milligrams.
- (2) Any person who sells any cigarette which contains tar or nicotine in excess of the maximum level prescribed by subsection (1) commits an offence.

8A Control on the content of tobacco products³⁰

- (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.

8B Testing required³¹

- (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.

8C Report of constituents, additives, and certain business information³²

- (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.

PART V - RESTRICTIONS ON SALE AND SMOKING OF TOBACCO PRODUCTS

9 Prohibition on supplying tobacco to persons under 18 years

- (1) Any person who —
 - (a) sells or supplies any tobacco product to a person under the age of 18 years;

- (b) purchases a tobacco product for the use of a person under the age of 18 years; or
 - (c) allows a person under the age of 18 years to purchase a tobacco product from a vending machine situated on premises occupied by the first mentioned person,commits an offence.
- (2) It is a defence to a prosecution under subsection (1) if a person proves that he —
 - (a) had reasonable cause to believe that the person purchasing the tobacco product, or for whom the tobacco product was purchased, or to whom the tobacco product was supplied, was not under the age of 18 years; or
 - (b) had taken all reasonable precautions to ensure that the tobacco product was not sold to a person under the age of 18 years.
- (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.³³
- (4) A person who contravenes subsection (1) or (3) is liable upon conviction to a fine not exceeding \$1,000.³⁴

9A “Smoking Kills” signage at point³⁵

- (1) Every retailer of tobacco products shall clearly display, in close proximity to where tobacco products are available 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.

9B Other products associated with tobacco product³⁶

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.

9C Restrictions on the sale of certain tobacco products³⁷

- (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.

10 Vending machines

- (1) Any person who places, or causes or permits to be placed, a vending machine for tobacco products for use by members of the public in any place to which persons under the age of 18 are allowed access commits an offence.
- (2) A person who contravenes subsection (1) is liable upon conviction to a fine not exceeding \$1,000.

10A Mail order and other methods of unsupervised sales prohibited³⁸

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.

10B Sales of tobacco products prohibited in certain places³⁹

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.

10C Discounting of tobacco products⁴⁰

- (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.

11 Prohibition on smoking in certain public places⁴¹

- (1) Any person who smokes in any —
 - (a) amusement centre, theatre or sports stand at any time when such place is open to the public;
 - (b) hospital or clinic;
 - (c) school (including school grounds);
 - (d) public transportation at any time when it is carrying fare-paying passengers;
 - (e) airport terminal building;
 - (f) building prescribed under section 13;
 - (g) office;
 - (h) workplace;
 - (i) licensed premises;
 - (j) restaurant;
 - (k) church facilities;
 - (l) meeting place, whether the meeting is work related, communal or social;
 - (m) place where kava is being served; or
 - (n) shop or other place where trading is conducted,commits an offence.
- (2) 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.
- (3) A person who contravenes subsection (1) is liable upon conviction to a fine not exceeding \$500.
- (4) The occupier and the person in charge of any place referred to in subsection (1) shall ensure that —
- (a) no person smokes; and
 - (b) a “no smoking” sign in English and Tongan is clearly displayed, in that place.
- (5) A person who contravenes subsection (4) is liable upon conviction to a fine not exceeding \$1,000.

12 Repealed⁴²

13 Minister may prescribe smoke-free buildings

The Minister may, by notice and subject to any conditions he thinks fit, prescribe any building or class of buildings or any part thereof to which members of the public have access to be smoke free places in which smoking is prohibited either permanently or for any period he thinks fit.⁴³

PART VI - MISCELLANEOUS

14 Authorised officer

- (1) The Minister may, by notice in the Gazette, prescribe any person or persons of a specified class or description other than police officers as authorised officers⁴⁴ for the purposes of this Act.

- (2) An authorised officer shall, upon request, provide identification that he is an authorised officer.

15 Offences and penalties

A person who contravenes or fails to comply with any provision of this Act creating an offence is liable upon conviction, where there is no penalty provided, to a fine not exceeding the following —

- (a) in the case of an individual, \$2,000 for a first offence and \$5,000 for a second or subsequent offence;
- (b) in the case of a body corporate \$5,000 for a first offence and \$10,000 for a second or subsequent offence.

16 Offences by corporate bodies

If a body corporate commits an offence against this Act, each director or other person concerned in the management of the body corporate is also guilty of, and liable to the penalty provided for that offence unless the director or other person proves that he exercised reasonable diligence to prevent the commission of the offence.

17 Prosecutions

- (1) Prosecutions for an offence under this Act may be brought —
 - (a) by or on behalf of the Attorney General;
 - (b) by a member of the police; or
 - (c) by an authorised officer.
- (2) A person referred to in subsection (1)(b) or (c), whether or not a legal practitioner, may lay, institute or conduct any charge, information, complaint or other proceeding arising under this Act, subject to any directions issued by the Attorney General.

17A Infringement Notices⁴⁵

- (1) If an authorised officer considers that any person has committed an offence against any of the provisions specified in subsection (7) he may issue to the person a Notice of Infringement in the form set out in Form 1 of the Schedule.
- (2) A person issued with such a notice may – (a) pay the fine set out in the notice, applicable to the offence alleged, to a Magistrate Court; or (b) contest the notice.
- (3) Where a person wishes to contest the notice a summons will be issued for an offence against the relevant provision of this Act.

- (4) The authorised officer who issued a Notice of Infringement under subsection (1) shall lodge the duplicate notice within 48 hours with the Clerk of the Magistrate's Court for the district.
- (5) The Clerk of the Magistrates Court shall – (a) where the fine is tendered by the person, receive the payment, issue a receipt and file the notice; or (b) where no payment is tendered within 21 days of the date of issue of the notice, issue a summons to the person for the offence alleged.
- (6) The summons shall be heard and determined by a Magistrate.
- (7) The offences to which this section applies, and the fixed penalties attaching thereto are –

Section	Offence	Fixed Penalty
5(1)	Sponsorship	\$3,000
8B	Failure to comply with annual testing for additives or constituents	\$2,000
8C	Failure to submit annual report and returns	\$2,000
9(1)	Sells or supplies tobacco products to persons under 18 years Purchase tobacco products for the use of persons under 18 years Allows a person under 18 years to purchase tobacco product from a vending machine	\$200
9(3)	Failure by retailer to display notice that sale of tobacco product to person under 18 years is prohibited	\$200
9A	Failure to display “Smoking Kills” sign	\$200
9B	Manufacture or sale of product designed for or likely to appeal to young persons under 18 years evoking or likely to evoke an association with a tobacco product or brand	\$2,000
9C(1)	Sale of loose cigarettes or loose tobacco	\$200
9C(2)	Sale, import or distribute cigarettes in a package containing fewer than 20 cigarettes or tobacco in package containing less than 30 grams	\$200
10	Placing or permits to be placed, a vending machine in a place where persons under 18 years are allowed to access	\$200

10B	Sale or distribution of tobacco product in a prohibited place	\$200
10C	Selling tobacco product at a discount	\$200
11(1)	Smoking in public or prohibited places	\$100
11(5)	Failure by person in charge to ensure no smoking takes place or no smoking sign is displayed	\$200
19	Failure to provide information requisitioned by an authorised officer	\$200
22	Failure to comply with any directions given by an authorised officer	\$200

- (8) The offences and their penalties listed in subsection (7) shall apply notwithstanding anything in the relevant section or the specific penalty set out therein.
- (9) If an incident is disposed of under this section by the payment of the sum specified in a Notice of Infringement then it shall be deemed to be an administrative penalty with no offence committed.

18 Powers of entry, search and seizure

- (1) For the purposes of this Act, an authorised officer may at all reasonable times —
- (a) enter any premises he knows or reasonably suspects —
 - (i) are being used for the production, manufacture, assembly, preparation, storage or sale of any tobacco product, tobacco product container or tobacco product advertisement; and
 - (ii) have been or are being or are likely to be used by any person in connection with a contravention of this Act;
 - (b) enter any premises where he knows or reasonably suspects that records are kept relating to the sale or manufacture of tobacco products or to tobacco product advertisements contravention of this Act;
 - (c) enter any premises which he knows or reasonably suspects are being used by any person for the printing, or as an office in connection with the printing, of any newspaper or other publication or for the manufacture or distribution of any videotape, which contravenes this Act;
 - (d) enter any broadcasting or television station which he knows or reasonably suspects is associated with any contravention of this Act;
 - (e) in any premises entered by him —

- (i) search for, examine, take possession of or make copies of or extracts from records relating to any tobacco product or tobacco product advertisement or container supplied or to be supplied or relating to any matter the subject of an investigation under this Act;
 - (ii) search for and examine goods found thereon;
 - (iii) seize any tobacco product or tobacco product advertisement or container without payment;
 - (iv) seize without payment any brochures, leaflets, books, writing, documents or other materials that he knows or reasonably suspects have been, are being, or are likely to be used to advertise, promote, publicise or package any tobacco product in contravention of this Act;
 - (v) open any room, place, container or package that he knows or reasonably suspects contains any tobacco product or tobacco product advertisement;
 - (vi) question with respect to matters under this Act any person he finds thereon;
 - (f) make such inquiry and examination as he believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Act or to ascertain whether any contravention of this Act has been, is being or is likely to be committed.
- (2) Subsection (1) does not authorise forcible entry by an authorised officer to any premises except under the authority of a warrant obtained pursuant to subsection (3).
- (3) A Magistrate, if satisfied upon the information of an authorised officer that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of this Act or for the keeping of records relating to a contravention of this Act, may issue a search warrant directing the authorised officer to enter the place specified in the search warrant for the purpose of exercising the powers conferred on an authorised officer by this Act.
- (4) For the purpose of gaining entry to any place an authorised officer may call in aid such persons as he considers necessary.
- (5) A search warrant issued under this section is, for a period of one month from its issue, sufficient authority —
- (a) to the authorised officer to whom it is directed and to all persons acting in aid of the officer to enter the place specified in the search warrant; and
 - (b) to the authorised officer to whom it is directed to exercise in respect of the place specified in the search warrant all the powers conferred on an authorised officer by this Act.

- (6) If an authorised officer has taken possession of records or of other property for the purposes of this Act he may —
 - (a) in the case of records, retain them for as long as necessary for those purposes but the person otherwise entitled to possession of the records, if he so requests, is entitled to be furnished as soon as practicable with a copy certified by the authorised officer to be a true copy and such a certified copy must be received in all courts and elsewhere as evidence of the matters contained in it as if it were the original;
 - (b) in the case of other property subject to this Act, retain the property for as long as is necessary for those purposes, and thereafter dispose of it as the Court directs.

19 Power to obtain information

- (1) Where an authorised officer has reasonable cause to suspect that any person has information or records in his possession which may be relevant to the operation or enforcement of this Act or to the investigation of a suspected contravention of this Act, he may require that person (either by oral or written requisition) to furnish —
 - (a) any information;
 - (b) any records or a copy thereof;in the person's possession.
- (2) For the purpose of subsection (1), a person shall be taken to be in possession of —
 - (a) information, if the person has the information or is entitled to access to the information;
 - (b) records, if the person has them in his possession or under his control in any place, whether for his own use or benefit or for another's use or benefit and although another person has the actual possession or custody of the records.
- (3) A requisition made under subsection (1) may require that the information or records or copy thereof be furnished —
 - (a) to the authorised officer or another authorised officer or to an officer of a specified department of the Government;
 - (b) at the place the requisition is made or at another place;
 - (c) forthwith or at, by or within a time specified;
 - (d) in person, or by registered mail or in another manner specified;
 - (e) by means of, or accompanied by, verification in the form of an affidavit;
 - (f) in the case of information, orally or in writing.
- (4) A person shall not without reasonable cause —

- (a) refuse or fail to furnish any information, records or copy as required under this section;
 - (b) in response to a requisition made under this section furnish information, records or copies that is or are false or misleading in a material particular.
- (5) A person shall not refuse to furnish any information, records or copy on the ground that its contents may incriminate him, but if a person, at the time he supplies any information, records or copy states in writing that the information, records or copy is, or may be, incriminating of him, the information, records or copy shall not be used in any proceedings against that person for an offence against this Act.
- (6) If a person records or stores any matter by means of a mechanical, electronic or other device, the duty imposed by this section to produce any records containing those matters shall include a duty to produce the matters in written form if that is demanded.
- (7) Any person required to produce a copy of any records under this section shall produce a clear reproduction of the records.
- (8) An authorised officer may take notes or copies of or extracts from records or a copy of any records produced under this section.
- (9) Any person who without reasonable cause —
- (a) fails to furnish information, records or copies required under this section; or
 - (b) furnishes in response to a requisition under this section information, records or copies that is or are false or misleading in a material particular,
- commits an offence.

20 Continuing offence

If a person commits an offence by failing to furnish information required under section 19 or to produce any records or a copy of any records —

- (a) the obligation to furnish the information or produce the records or a copy of them, as the case may be, continues until the person complies with the requirement notwithstanding that in a particular case a time was specified at, by or within which compliance was required and that time has passed;
- (b) the person commits a continuing offence in respect of each day after the day of conviction during which the failure to comply with the requisition continues;
- (c) the person is liable to a fine of \$100 for each day during which the offence continues; and

- (d) the person may be prosecuted from time to time in respect of continuing offence under paragraph (b).

21 Obstruction

- (1) A person shall not obstruct an authorised officer in the exercise of his powers under this Act.
- (2) For the purposes of this Act, a person obstructs an authorised officer in the exercise of his powers under this Act if he —
 - (a) assaults, abuses, intimidates or insults the authorised officer or any other person assisting the authorised officer in the exercise of his powers under this Act;
 - (b) directly or indirectly prevents or attempts to prevent any person from being questioned by an authorised officer or from furnishing under this Act any information or records or copies; or
 - (c) in any other way obstructs or attempts to obstruct an authorised officer in the exercise of his powers under this Act.
- (3) Any person who obstructs an authorised officer in the exercise of his powers under this Act commits an offence.⁴⁶

22 Directions may be issued to secure compliance

- (1) If —
 - (a) any tobacco product, container, label, tobacco product advertisement, licenced premises, restaurants, smoke-free building, smoke-free area, or other place or thing does not comply with the provisions of this Act; or
 - (b) any provision of this Act has not been complied with in relation to any of the aforementioned,

an authorised officer may, in writing, direct any person who has contravened the provision by such non-compliance to take, within a specified time not exceeding 14 days, such steps as may be specified to prevent any further contravention and to remedy the matters in respect of which the non-compliance has occurred.

- (2) The issue of a direction under this section does not affect any proceeding under this Act which has been or may be taken for the non-compliance which gave rise to the direction.
- (3) A person to whom a direction is issued under this section and who does not comply with the direction commits an offence.

23 Removal of advertisements and destruction of tobacco products

- (1) If a person is convicted of an offence under section 3, the Court, in addition to any other penalty, may order —
 - (a) that any advertisement be removed or obscured or destroyed by an authorised officer; and
 - (b) that the person convicted shall pay the reasonable costs incurred by the authorised officer in removing or obscuring or destroying any advertisement.
- (2) If a person is convicted of an offence under section 6, 7, 7A, 7B, 8 or 8A the Court, in addition to any other penalty, may order —
 - (a) that the tobacco product be confiscated and destroyed by an authorised officer; and
 - (b) that the person convicted shall pay the reasonable costs incurred by an authorised officer in confiscating and destroying the tobacco product.⁴⁷
- (3) Costs payable under subsection (1) or (2) may be recovered in the same way as a fine.

24 Contracts etc. void

- (1) A contract, agreement, undertaking or understanding which is in effect when this Act comes into force is void to the extent to which it is inconsistent with this Act.
- (2) Neither the Crown nor any person is liable to pay any damages or other compensation to any other person in consequence of subsection (1).

25 Regulations

The Minister may with the consent of Cabinet, make regulations, not inconsistent with this Act, prescribing matters necessary or convenient to be made for carrying out or giving effect to this Act.

SCHEDULE⁴⁸**Form 1****NOTICE OF INFRINGEMENT****(Section 17A)**

Date :
 To :
 of
 (address)

An authorised officer alleges that you have committed an offence under the Tobacco Control Act 2000.

If you choose to have this offence dealt with by way of payment of Infringement Notice in accordance with section 17A you may pay the following fixed fine for this offence –

Section :

Offence:

Fixed Infringement Notice Fine:

To dispose of this matter in this way, you may sign the declaration below and take this notice together with the sum of \$..... to pay the fine only to the Clerk of the Magistrate's Court at District within 21 days of today's date.

OR

If you wish to contest this offence a summons will be issued to you after 21 days and you will be required to attend a court and appear before a Magistrate and if convicted the penalty will be decided by the Magistrate in accordance with the Tobacco Control Act 2000 which may be more than specified on this Infringement Notice.

DECLARATION:

I, (insert name)
 understand that under clause 10 of the Constitution of Tonga I have a right to have this matter dealt with by a court. However, instead of appearing in court, I wish to pay the fine as set out in this notice. I tender this Declaration and the fine of \$..... set by this Notice of Infringement.

Signed..... Dated
 (see overleaf for list of offences and penalties)

TOBACCO CONTROL ACT 2000
FORM 1 - INFRINGEMENT NOTICE REVERSE SIDE

Section	Offence	Fixed Penalty
5(1)	Sponsorship	\$3,000
8B	Failure to comply with annual testing for additives or constituents	\$2,000
8C	Failure to submit annual report and returns	\$2,000
9(1)	Sells or supplies tobacco products to persons	\$200

	under 18 years Purchase tobacco products for the use of persons under 18 years Allows a person under 18 years to purchase tobacco product from a vending machine	
9(3)	Failure by retailer to display notice that sale of tobacco product to person under 18 years is prohibited	\$200
9A	Failure to display “Smoking Kills” sign	\$200
9B	Manufacture or sale of product designed for or likely to appeal to young persons under 18 years evoking or likely to evoke an association with a tobacco product or brand	\$2,000
9C(1)	Sale of loose cigarettes or loose tobacco	\$200
9C(2)	Sale, import or distribute cigarettes in a package containing fewer than 20 cigarettes or tobacco in package containing less than 30 grams	\$200
10	Placing or permits to be placed, a vending machine in a place where persons under 18 years are allowed to access	\$200
10B	Sale or distribution of tobacco product in a prohibited place	\$200
10C	Selling tobacco product at a discount	\$200
11(1)	Smoking in public or prohibited places	\$100
11(5)	Failure by person in charge to ensure no smoking takes place or no smoking sign is displayed	\$200
19	Failure to provide information requisitioned by an authorised officer	\$200
22	Failure to comply with any directions given by an authorised officer	\$200

ENDNOTES

¹ **Act 30 of 2002**

Amended by Act 9 of 2004, commencement 23 August 2004

Amended by Act 17 of 2014, commencement 18 February 2016

² LN 3/2001

³ Inserted by Act 9 of 2004

⁴ Inserted by Act 9 of 2004

⁵ Inserted by Act 9 of 2004

⁶ Inserted by Act 9 of 2004

⁷ Inserted by Act 9 of 2004

⁸ Inserted by Act 9 of 2004

⁹ Inserted by Act 9 of 2004

¹⁰ Inserted by Act 9 of 2004

¹¹ Inserted by Act 9 of 2004

¹² Inserted by Act 9 of 2004

¹³ Inserted by Act 9 of 2004

¹⁴ Inserted by Act 9 of 2004

¹⁵ Inserted by Act 9 of 2004

¹⁶ Inserted by Act 9 of 2004

¹⁷ Substituted by Act 8 of 2008

¹⁸ Amended by Act 17 of 2004

¹⁹ Inserted by Act 9 of 2004

²⁰ Inserted by Act 9 of 2004 and Amended by Act 17 of 2014

²¹ Inserted by Act 17 of 2014

²² Inserted by Act 9 of 2004

²³ Inserted by Act 9 of 2004

²⁴ Substituted by Act 9 of 2004

²⁵ Amended by Act 17 of 2014

²⁶ Inserted by Act 9 of 2004

²⁷ Substituted by Act 9 of 2004

²⁸ Inserted by Act 9 of 2004

²⁹ Inserted by Act 9 of 2004

³⁰ Inserted by Act 9 of 2004

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- ³¹ Inserted by Act 9 of 2004
- ³² Inserted by Act 9 of 2004
- ³³ Substituted by Act 9 of 2004
- ³⁴ Inserted by Act 9 of 2004
- ³⁵ Inserted by Act 9 of 2004 and Amended by Act 17 of 2014
- ³⁶ Inserted by Act 9 of 2004
- ³⁷ Inserted by Act 9 of 2004
- ³⁸ Inserted by Act 9 of 2004
- ³⁹ Inserted by Act 9 of 2004
- ⁴⁰ Inserted by Act 9 of 2004
- ⁴¹ Amended by Act 9 of 2004 and Amended by Act 17 of 2014
- ⁴² Repealed by Act 17 of 2014
- ⁴³ Amended by Act 17 of 2014
- ⁴⁴ By GS 16/2003 the following were appointed — District and Town Officers, Health Staff (excluding the Domestic, Maintenance, Drivers and Clerical Cadre), Chief Medical Officer, Public Health, Medical Officers, Health Officers, Public Health Nurses
- ⁴⁵ Inserted by Act 17 of 2014
- ⁴⁶ Inserted by Act 17 of 2014
- ⁴⁷ Amended by Act 9 of 2004
- ⁴⁸ Inserted by Act 17 of 2014