



SAMOA

TOBACCO CONTROL ACT 2008

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TOBACCO CONTROL ACT

2008

No. 26

AN ACT:

- (a) to protect the health of the people of Samoa from the diseases and premature death caused by tobacco use and tobacco smoke exposure;
- (b) to protect non-smokers from the hazards posed by tobacco smoke;

- (c) to regulate the marketing, advertising, sale, promotion and distribution of tobacco products, whether directly or through the sponsorship of other products, services or events; and
- (d) to monitor and regulate the presence of harmful constituents in tobacco products.

[Assent date: 18 July 2008]

[Commencement date: 1 January 2009]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Tobacco Control Act 2008.

(2) This Act commences on a date nominated by the Minister.

(3) Notice of commencement of this Act is to be published in Samoan and English in the Savali.

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;

“air service operations” has the same meaning as defined in the Civil Aviation Act 1998;

“carton” means a box, pack, pouch, tin, container, wrapping or other package containing 2 or more tobacco packages;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

- “cigarette” means a tobacco product comprising a roll of cut tobacco, enclosed in paper and includes the tobacco product commonly known as a cigarillo;
- “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, constituents mean the chemicals inherent in the tobacco itself;
- “company name” includes any corporate name, firm name or business name, whether or not it is registered or registrable under the Companies Act 1955, the Companies Act 2001 or any other enactment;
- “Court” means the Supreme Court of Samoa;
- “craft” means:
- (a) a craft used for air service operations;
 - (b) a ship as defined in the Shipping Act 1998;
- “distributor” means a person, company, corporate body, who engages in the business of selling tobacco products including an importer, wholesaler, distributor, supermarket, and retail store that sells or distributes tobacco in a carton;
- “employee” means any person of any age employed under a contract of service by an employer to do any work for hire or reward;
- “employer” means a person who employs any employee and includes owners of public transport;
- “enclosed” means an area within or on the premises or vehicle that, when all its doors, windows, and other closeable openings are closed, is completely or substantially enclosed by:
- (a) a ceiling, roof or similar overhead surface;
 - (b) walls, sides, screens or other similar surfaces; and
 - (c) those openings;
- “health message” means a warning or an explanatory statement or picture about the health effects of tobacco use, the benefits of or suggestions for quitting, and any other matter related to tobacco and health, as prescribed by regulations made under the Act;
- “hospital” means any facility providing inpatient care or care for patients;

- “import” means the importation of tobacco products into Samoa in any manner, whether lawfully or unlawfully, brought into or within the territorial limits of Samoa from any country outside Samoa;
- “internal flight” means a flight:
- (a) between any two or more places in Samoa; or
 - (b) that commences from any place in Samoa and is intended to terminate at that same place;
- “licence” means a licence issued under this Act to either:
- (a) manufacture; or
 - (b) import; or
 - (c) distribute;
- “licensed premises” has the same meaning defined in the Liquor Act 2011;
- “licensee” means a holder of a licence issued under this Act;
- “loose cigarettes” means cigarettes that are not contained in a package;
- “loose tobacco” means:
- (a) tobacco prepared for smoking in a hand-rolled cigarette; or
 - (b) pipe tobacco;
- “Minister” means the Minister of Health;
- “Ministry” means the Ministry of Health;
- “National Tobacco Control Committee” means the National Tobacco Control Committee established under Part 2A;
- “occupier” means a person who has responsibility for and control over the condition of premises or the activities in such premises, or control over persons allowed to enter the premises, despite the fact that there is more than one occupier of the same premises;
- “other message” means, in relation to messages on tobacco packaging, other 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;
- “package” means any pack, carton, wrapping, or other container in which tobacco products are customarily sold at retail and includes the packages label;
- “premises” includes any part of a building, and any place or part of a place;

- “prescribed fee” means a fee to be prescribed pursuant to section 35A;
- “public place” means a place or vehicle that the public, or a section of the public is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise);
- “publish” means:
- (a) insert in any newspaper or other periodical publication which is printed, published, or distributed in Samoa;
 - (b) send to any person, by post or otherwise;
 - (c) deliver to any person or leave upon premises in the occupation of any person;
 - (d) broadcast within the meaning of the Broadcasting Act 2010;
 - (e) include in any film or video recording;
 - (f) include in any disk for use with a computer;
 - (g) disseminate by means of any other electronic medium;
 - (h) distribute by any means;
 - (i) display by way of a sign, notice, poster or other means; or
 - (j) bring to the notice of the public in Samoa in any other manner;
- “resident” means:
- (a) a citizen of Samoa within the meaning of the Citizenship Act 2004;
 - (b) a permanent resident of Samoa who holds a Permanent Resident Permit under the Immigration Act 2004; or
 - (c) a company incorporated in Samoa;
- “retailer” means a person engaged in any business that includes the sale of tobacco products at retail;
- “smoke-free area” means any public place but does not include an exempt premise;
- “smoking accessory” means any article or substance that is used in conjunction with smoking, including cigarette papers, pipe cleaners, cigarette lighters, lighter fuel, ashtrays, and includes the packaging, carton, wrapping,

or other container in which smoking accessories are customarily sold at retail;

“tobacco industry” means all manufacturers, importers and distributors with licences under this Act;

“tobacco product” means any product made or manufactured from tobacco and intended for use by smoking, inhalation, or mastication and includes electronic nicotine and non nicotine delivery systems and nasal and oral snuff but does not include any medicine that is sold or supplied wholly or principally for use as an aid in giving up smoking;

“tobacco product advertisement” means any word, whether written, printed, or spoken, including on film, video recording, or other medium, broadcast or telecast, and any pictorial representation, design, or device used to encourage the use or notify the availability or promote the sale of any tobacco product or to promote smoking behaviour and includes:

- (a) any depiction, in a film, video recording, telecast or other visual medium of a tobacco product or a tobacco product trade mark, where in return for that depiction any money is paid, or any valuable thing is given, whether to the maker or producer of that film, video recording, telecast or visual medium or to any other person; and
- (b) the use in any advertisement or promotion to the public of a tobacco product manufacturer’s company name where that name or any part of that name is used as, or is included in, a tobacco product trade mark, and “advertise” has a corresponding meaning;

“tobacco sponsorship” means the public attribution, acknowledgment, association or identification of a tobacco manufacturer, importer, seller, brand, or product with, on, or in connection with:

- (a) an entertainment, sporting, recreational, educational, cultural, or other public event or work;
- (b) a person or team participating in such an event or work, including his or her equipment, clothing, and accessories;

- (c) a service provided or contribution made by a tobacco manufacturer importer or seller; or
 - (d) a building, institution, stadium, organisation or other entity that is not a tobacco manufacturer, importer or seller;
- “to smoke” means to inhale or exhale the smoke from, or to handle, a lighted tobacco product and “smoked” and “smoking” have corresponding meanings;
- “trademarks” includes any trademark whether or not it is registered or registrable as such under the Intellectual Property Act 2011, and also includes:
- (a) any brand name;
 - (b) any company name, where that name is used for advertising or promotional purposes; or
 - (c) any name, word, or mark that so resembles any trade mark that it is likely to be taken as, or confused with, that trade mark;
- “vending machine” means any self-service machine that:
- (a) on the insertion of a coin or token or by any other means, dispenses by way of sale tobacco products, whether automatically or with the assistance of the purchaser; and
 - (b) does not require replenishment between each sale;
- “vehicle” means bus, aeroplane, taxi, hire car, ferry or other vessel;
- “workplace” means any area that is occupied by an employer and that employees usually frequent during the course of their employment and includes any vehicle, cafeteria, corridor, lift, lobby, stairwell, toilet and washroom and also includes any enclosed common areas and employer provided vehicles normally used by employees, but does not include any place which is primarily used as a residence occupied by the employer.

3. Act to bind the Government – This Act binds the Government.

PART 2
SMOKE FREE ENVIRONMENT WHERE
PUBLIC HAS ACCESS

4. Purpose of this Part – The purpose of this Part is to prevent, so far as is reasonably practicable, the detrimental effects of smoking on the health of any person who does not smoke, or who does not wish to smoke, inside any workplace or in public enclosed areas.

5. Smoking prohibited in smoke-free area – (1) Subject to this section, any person who smokes in a smoke-free area commits an offence punishable by a fine not exceeding 10 penalty units.

(2) A person who performs in a theatre or other performance space does not commit an offence under this section by smoking during the performance if smoking is a necessary part of the performance.

6. Occupier not to allow smoking in smoke-free area

(1) An occupier must take all reasonably practicable steps to ensure that no person smokes at any time in a smoke-free area.

(2) An occupier who fails to comply with this section commits an offence punishable by a fine not exceeding 20 penalty units.

7. Occupier to display signs – (1) The occupier of a smoke-free area must display within the smoke-free area signs stating that smoking is not permitted.

(2) The signs required by subsection (1) must comply with any requirements set out in regulations made under this Act.

(3) A person who contravenes this section commits an offence punishable by a fine not exceeding 20 penalty units.

PART 2A

NATIONAL TOBACCO CONTROL COMMITTEE

7A. National Tobacco Control Committee – (1) The National Tobacco Control Committee is established.

(2) The Members are:

- (a) a representative of the Ministry of Health who shall be the Chairperson and Secretary; and
- (b) a representative of the Ministry of Finance; and
- (c) a representative of the Ministry of Education, Sports and Culture; and

- (d) a representative of the Ministry of Women, Community and Social Development; and
- (e) a representative of the Samoa Police Service; and
- (f) a representative of the Customs Division of the Ministry for Revenue; and
- (g) a representative of the Samoa Association of Sports and National Olympic Committee; and
- (h) a representative of the Samoa Cancer Society; and
- (i) a representative of the Samoa National Youth Council.

7B. Functions of the National Tobacco Control Committee – The functions of the National Tobacco Control Committee is:

- (a) to develop a Multi-sectoral Workplan to assist the implementation of the Tobacco Control Act 2008, international obligations to the Framework Convention of Tobacco Control (FCTC) and the Protocol to Eliminate Illicit Trade in Tobacco Products and any other related Tobacco laws;
- (b) to be an advisory committee to lead communication and advocacy within their organisation or ministry about the importance of tobacco control;
- (c) support the coordination of input from their agency on tobacco control activities as appropriate;
- (d) to liaise within their agency as appropriate to strengthen the effective implementation of tobacco control laws; and
- (e) support advocacy, strategies to promote tobacco control activities.

7C. Meetings of the National Tobacco Control Committee (“Committee”) – (1) The Committee shall meet 4 times every calendar year to discuss updates and address any issues that arise and put in strategies to improve reported situations.

(2) The quorum for a meeting is 8 members of the Committee.

(3) The Committee must provide a quarterly report to the Minister of Health through the Chief Executive Officer of the Ministry of Health.

**PART 3
EXEMPT PREMISES**

8. Exempt premises – (1) In this Act, exempt premises means any of the following premises that are not the subject of a declaration in force under section 10:

(a) any place or premises that are the subject of a liquor licence in force under the Liquor Act 2011, other than—

(i) a part of the premises while that part is being used as a dining area where meals are ordered, served and consumed; or

(ii) a place or premises where liquor is sold to the public but not for consumption at that place or premises;

(b) the premises of a club with members, other than—

(i) a part of the premises while the part is being used as a dining area where meals are ordered, served and consumed; or

(ii) a part of the premises while the part is being used for a function at which food is served; or

(c) any premises, or class of premises, prescribed by the regulations for the purposes of this definition.

(2) Exempt premises do not include any part of premises required to be designated as a smoke-free area under the regulations.

9. Regulations for, and review of exempt premises – (1)

The regulations may make provision for or with respect to requirements with which exempt premises must comply.

(2) The Ministry must review sections 8, 9 and 10 at such time and in such phases as the Chief Executive Officer requires.

10. Removal of exemption for premises – (1)

The Chief Executive Officer may declare that any particular premises cease to be exempt premises if satisfied that any requirement of

this Act or the regulations has not been complied with in relation to the premises.

(2) The Chief Executive Officer may only make a declaration under this section:

(a) after having given the occupier of the premises concerned—

(i) written advice that the Chief Executive Officer is considering making a declaration under subsection (1);

(ii) the reasons why the Chief Executive Officer is considering making a declaration under subsection (1); and

(iii) an opportunity to make a submission within the period specified in the advice (being not less than 14 days); and

(b) after having considered any submission made by the occupier within that period.

(3) A declaration under this section:

(a) must be in writing;

(b) a copy of the declaration must be served on the occupier of the place or premises concerned; and

(c) takes effect on the day on which the declaration is served or on a later day specified in the notice.

(4) The Chief Executive Officer may revoke a declaration under this section by notice in writing served on the occupier of the premises concerned.

PART 4

SMOKE FREE WORKPLACES

11. Smoking prohibited in the workplace – (1) Smoking in the work place is prohibited.

(2) A person who smokes in a workplace commits an offence punishable by a fine not exceeding 10 penalty units.

12. Employer not to allow smoking in the workplace –

(1) An employer must take all reasonably practicable steps to ensure that no person smokes at any time in a workplace.

(2) An employer who fails to comply with this section commits an offence punishable by a fine not exceeding 20 penalty units.

13. Employer to display signs – (1) An employer must display signs at the workplace stating that smoking is not permitted.

(2) The signs required by subsection (1) must comply with any requirements set out in the regulations.

(3) A person who contravenes this section commits an offence punishable by a fine not exceeding 20 penalty units.

14. Exemptions – Employers and persons must not be subject to the provisions of this Part if the workplace is a place where smoking is permitted under this Act.

15. Liabilities of a body corporate – When a body corporate is convicted of any offence under this Act, the director, manager and officer of the body corporate are liable to be convicted of the same offence and fined in the same manner as the body corporate unless the director, manager or officer, as the case may require, establishes to the satisfaction of the Court that the director or manager or officer, as the case may require, did not know and could not have taken reasonable steps to have known that an offence under this Part was being or had been committed by the body corporate.

PART 5 TOBACCO PRODUCT CONTROL

16. Purpose of this Part – The purpose of this Part is:

- (a) to reduce the social approval of tobacco use, particularly among young people by—
 - (i) imposing controls on the marketing, advertising, sale, promotion, packaging and distribution of tobacco products and their association through sponsorship with other products and events; and
 - (ii) requiring health messages and other information to be displayed on, or included with, packages containing tobacco products; and
- (b) to reduce some of the harmful effects of tobacco products on the health of users by monitoring

and regulating the presence of harmful substances in the products and in tobacco smoke.

17. Advertising of tobacco products – (1) Subject to this section and section 19, no person shall publish, or arrange for any other person to publish, any tobacco product advertisement in Samoa.

(2) Subsection (1) does not apply to any price list given to retailers of tobacco products if the price list includes the health messages required by or under this Part.

(3) Subsection (1) does not apply to any advertisement included in any book, magazine, or newspaper printed outside Samoa, or in any radio or television transmission originating outside Samoa, or in any film or video record made outside Samoa, unless:

- (a) the principal purpose of the book, magazine, newspaper, transmission, film, or video recording is the promotion of the use of tobacco products;
- (b) the book, magazine, newspaper, film or video recording is intended for sale, distribution or exhibition primarily in Samoa; or
- (c) for an advertisement in any radio or television transmission, the advertisement is targeted primarily at an audience within Samoa.

(4) Subsection (1) does not apply to the publication by a tobacco products manufacturer of a tobacco product advertisement in a magazine that is intended for distribution only to employees of the manufacturer.

(5) Subsection (1) does not apply to:

- (a) the exhibition, in any museum or art gallery, of any work or artefact; or
- (b) the dissemination, broadcasting, or exhibition of any film, video recording, or sound recording, where—
 - (i) that film, video recording or sound recording was made before the commencement of this Act; and
 - (ii) the tobacco product advertisement included in that film, video recording, or sound recording is in the form of a reference to, or

a depiction of, a tobacco product trade mark that is only an incidental part of that film, video recording, or sound recording.

(6) A person who, without reasonable excuse, publishes any advertisement for a tobacco product in contravention of this section commits an offence and is liable:

- (a) for a manufacturer, importer or distributor of a tobacco product, to a fine not exceeding 1,000 penalty units; or
- (b) for any other case, to a fine not exceeding 100 penalty units.

18. Exceptions for retailers – (1) Despite section 17, a retailer of tobacco products may do any of the following things:

- (a) *Repealed by Act 2019, No. 4*
- (b) the placement, inside a retailer's place of business, of price notices indicating the tobacco products available for purchase within that place and their prices, provided that these notices comply with any prescribed requirements in relation to their size, colour, content, number, and health message; or
- (c) display the retailer's name or trade name on the exterior of the retailer's place of business, in accordance with any prescribed requirements, even though the name contains any word or expression signifying that any tobacco product is available in that place for purchase, so long as the name does not include the trade mark of a tobacco product or the company name of a tobacco product manufacturer.

(2) A person who, without reasonable excuse, fails to comply with any regulations made for the purpose of this section commits an offence and is liable to a fine not exceeding 100 penalty units.

19. Use of trademarks, etc. on goods other than tobacco products, or in relation to sponsored events – (1) No person shall use, otherwise than in a private capacity, a tobacco product trade mark:

- (a) on any article other than a tobacco product or a package or container in which a tobacco product is sold or shipped; or
- (b) for the purpose of advertising or identifying to the public—
 - (i) any article other than a tobacco product;
 - (ii) any service, activity or event; or
 - (iii) any scholarship, fellowship or other educational benefit, –

even though that person would be, but for this Act, entitled to use the trade mark on that article or for that purpose.

(2) If a trade mark includes the company name, or part of the company name, of a manufacturer, importer, or distributor in Samoa of any tobacco product no person shall otherwise than in private capacity, use that company name or part of the company's name for the purpose of advertising or identifying to the public:

- (a) any article other than a tobacco product;
- (b) any service, activity, or event; or
- (c) any scholarship, fellowship, or other educational benefit,—

even though that person would be, but for this Act, entitled to use that trade mark or company name or part of the company name for that purpose.

(3) No person shall distribute, sell or offer or expose for sale any article, other than a tobacco product or a package or container in which a tobacco product is sold or shipped, that bears a trade mark of a tobacco product that is sold in Samoa.

(4) A person who, without reasonable excuse, uses any trade mark or company name in contravention of subsection (1) or (2), or who distributes, sells, or offers or exposes for sale any article in contravention of subsection (3) commits an offence and is liable:

- (a) for a manufacturer, importer or distributor of a tobacco product, to a fine not exceeding 1,000 penalty units; or
- (b) for any other case, to a fine not exceeding 100 penalty units.

20. Organising or promoting activity using trademarks, etc., of tobacco products – (1) No manufacturer, importer, distributor or retailer of tobacco products shall:

- (a) organise or promote any organised activity that is to take place, in whole or in part in Samoa;
 - (b) make any financial contribution towards any organised activity that is to take place, or its taking place, or has taken place, in whole or in part in Samoa; or
 - (c) make any financial contribution to any person in respect of the organisation, promotion or the participation by that person in an organised activity that is to take place, or is taking place, or has taken place, in whole or in part, in Samoa, –
- where that organised activity involves the use of a tobacco product trade mark, or of a company name or any part of a company name included in that tobacco product trade mark.

(2) A manufacturer, importer, distributor or retailer of a tobacco product who contravenes this section commits an offence and is liable:

- (a) for a manufacturer, importer or a distributor, to a fine not exceeding 1,000 penalty units; or
- (b) for any other case, to a fine not exceeding 100 penalty units.

21. Free distribution and rewards prohibited – (1) No manufacturer, distributor, importer or retailer of a tobacco product shall:

- (a) distribute any tobacco product;
- (b) supply any tobacco product to any person for subsequent distribution; or
- (c) for a retailer, supply any tobacco product to any person for the purpose of that retailer's business,–

free of charge or on a reduced charge.

(2) No person shall:

- (a) offer any gift or cash rebate, or the right to participate in any contest, lottery or game, to the purchaser of a tobacco product in consideration for the purchase of that product, or to any person

in consideration for the provision of evidence of such a purchase; or

- (b) offer to any retailer any gift or cash rebate, or the right to participate in any contest, lottery or game, as an inducement or reward in relation to—
 - (i) the purchase or sale of tobacco products by that retailer;
 - (ii) the advertising of tobacco products inside that retailer's place of business; or
 - (iii) the location of tobacco products in a particular part of that retailer's place of business.

(3) No manufacturer, distributor, importer or retailer of a tobacco product shall provide promotional discounts and internet sales of tobacco products.

(4) Subsection (2) does not apply in respect of any payment or reward to any person who:

- (a) with the authority of the Chief Executive Officer or of some other person authorised for that purpose by the Chief Executive Officer; and
- (b) for the purpose of monitoring compliance with the provisions of this Part, –

purchases, or attempts to purchase, any tobacco product.

(5) A person who offers any gift, cash rebate, or right of participation in contravention of this section, commits an offence and is liable:

- (a) for a manufacturer, importer or distributor, to a fine not exceeding 1,000 penalty units; or
- (b) for any other case, to a fine not exceeding 100 penalty units.

22. Tobacco products not to be advertised or labelled as suitable for chewing – (1) No person shall publish an advertisement for a tobacco product that directly or indirectly states or suggests that the product is suitable for chewing or for any other oral use (other than smoking).

(2) No person shall import for sale, sell, pack or distribute any tobacco product labelled or otherwise described as suitable for chewing, or for any other oral use (other than smoking).

(3) A person who publishes any advertisement in contravention of subsection (1), or who imports, sells, packs or distributes any tobacco product in contravention of this subsection (2) commits an offence and is liable:

- (a) for a manufacturer, importer or distributor, to a fine not exceeding 1,000 penalty units; or
- (b) for any other case, to a fine not exceeding 100 penalty units.

23. Sale of tobacco products to persons under 21 prohibited – (1) No person shall sell any tobacco product to a person who is younger than 21 years.

(2) It is a defence to a charge in respect of a contravention of subsection (1) if the person proves that the offence was committed without the person's knowledge and that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

(3) It is no defence to a charge in respect of a contravention of subsection (1):

- (a) that the person to whom the tobacco product was sold was purchasing it for or on behalf of, or as agent for, a person to whom tobacco products may legally be sold; or
- (b) that the person who sold the tobacco product believed on reasonable grounds that the person to whom the tobacco product was sold was purchasing it for or on behalf of, or as agent for, a person to whom tobacco products may legally be sold.

(4) A person who sells by retail any tobacco product must display clearly for the public a notice to the effect that the sale of any tobacco product to persons who are younger than 21 years is prohibited.

(5) A retailer of a tobacco product who fails, without reasonable excuse, to display the notice required by subsection (4) commits an offence and is liable to a fine not exceeding 100 penalty units.

(6) A person commits an offence and is liable to a fine not exceeding 1,000 penalty units who sells any tobacco product in contravention of this section.

23A. Sale of tobacco products by persons under 15 prohibited – (1) A person below the age of 15 must not sell any tobacco product.

(2) A person who breaches subsection (1) commits an offence and is liable upon conviction to pay a fine not exceeding 1,000 penalty units.

24. Restrictions on sale of certain tobacco products in small quantities – (1) No person shall:

- (a) sell by retail;
- (b) offer for sale by retail,–

loose cigarettes in amounts of fewer than 10 cigarettes.

(2) No manufacturer, importer, distributor or retailer may sell or offer for sale:

- (a) cigarettes in a package that contains fewer than 10 cigarettes; or
- (b) loose tobacco in a package that contains less than 15 grams of loose tobacco.

(2A) The Chief Executive Officer may prescribe the permitted weight and size of a cigarette in a packet that is permitted to be sold by retailers.

(3) A person commits an offence and is liable to a fine not exceeding 1,000 penalty units who permits any tobacco product to be sold in contravention of this section.

25. Sale of tobacco via vending machines and other methods of unsupervised sales prohibited – (1) No person shall sell or offer to sell tobacco products through a vending machine.

(2) Tobacco products may not be sold or furnished through the mail, or through any means by which the age of the purchaser or recipient of the tobacco product cannot be verified.

(3) Tobacco products may not be sold or offered for sale by means of a display that permits a person to handle the tobacco product before paying for it.

(4) A person commits an offence and is liable to a fine not exceeding 1,000 penalty units who permits any tobacco product to be sold in a manner prohibited by this section.

26. Labelling and health messages – (1) No person shall sell or offer for sale a tobacco product unless:

- (a) the package containing the product conforms with prescribed requirements;
- (b) the package containing the product displays in accordance with the regulations—
 - (i) a health message;
 - (ii) a list of the harmful constituents of the product;
 - (iii) the emissions of the product (if any); and
 - (iv) for a tobacco product intended for smoking, a list of the harmful constituents and their respective quantities present in the smoke; and
- (c) a leaflet which complies with the prescribed requirements, containing information relating to the effects of the use of the product on health and advice as to how the purchaser of the product may cease or decrease their consumption of the product, is placed in or on the package with the product.

(2) Any tobacco product or advertisement must carry health messages that:

- (a) are 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) take up a minimum of 30% of the principal display areas of tobacco packets and packages.

(3) Regulations may provide that every unit packet and package of tobacco sold in Samoa must carry messages that are in the form of, or include, pictures or pictograms.

(4) All tobacco products imported for sale or sold in Samoa must carry a clear statement that the product is intended for sale in Samoa.

(5) In subsection (1), “harmful constituent” means any substance declared by regulations to be a harmful constituent for the purposes of that subsection.

(6) A manufacturer, distributor, importer, or retailer of a tobacco product who distributes or supplies any tobacco product in contravention of subsection (1) commits an offence and is liable to a fine not exceeding 1,000 penalty units.

(7) A person commits an offence and is liable to a fine not exceeding 1,000 penalty units who being a manufacturer, importer, distributor, or retailer of a tobacco product sells or offers for sale any cigarettes or tobacco in contravention of subsection (4).

27. Misleading labelling prohibited – (1) No person shall package or label tobacco products 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.

(2) No person shall sell, distribute, or display for sale or distribution, import, or export any tobacco product that displays any words, terms, markings or other identifiers on its package or label that are prescribed as being misleading.

(3) Any requirements arising from subsections (1) and (2) do not relieve a manufacturer, importer or retailer of tobacco products of other obligations or liabilities arising from other requirements to warn consumers of the risks of using tobacco products.

(4) A person commits an offence and is liable to a fine not exceeding 1,000 penalty units who:

- (a) packs or labels a tobacco product in a manner prohibited by subsection (1); or
- (b) sells, distributes or displays for sale or distribution, import or export, any tobacco product that is labelled in a manner prohibited by subsection (2).

28. Controls on the contents of tobacco products – (1) No person shall manufacture, import, export, sell or otherwise distribute any tobacco product that does not comply with prescribed standards relating to the manufacture of tobacco products.

(2) Regulations relating to the manufacture of tobacco products may:

- (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.
- (3) A person commits an offence who manufactures, imports, exports, sells or distributes any tobacco product that does not comply with the standards required by subsection (1) and is liable:
 - (a) for a manufacturer, importer, exporter or distributor, to a fine not exceeding 1,000 penalty units; or
 - (b) for a retailer, a fine not exceeding 100 penalty units.

29. Testing required – (1) This section applies to each product prescribed for the purposes of this section.

(2) A manufacturer and an importer of a product to which this section applies shall in each year conduct, in accordance with the regulations, and at an overseas laboratory nominated by the Chief Executive Officer, either or both of the following (as the regulations require):

- (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.

(3) If the regulations require it, each variant of the brand must be tested separately.

(4) In this section, “product” means anything that is a tobacco product of any kind.

(5) In addition to the annual test or tests required by subsection (2), the Chief Executive Officer may, by notice in writing to the manufacturer or importer of a product to which that section applies, require a further test or tests to be conducted.

(6) The further test or tests must be conducted, in accordance with the regulations:

- (a) in a laboratory nominated by the Chief Executive Officer; and

(b) at the expense in all respects of the manufacturer or importer.

(7) In any year, the Chief Executive Officer may require further tests under subsection (5) in respect of more than 10% of the brands of products to which subsection (2) applies sold by a particular manufacturer or importer.

(8) A manufacturer or importer of a tobacco product who fails:

(a) to conduct any test required by section 29(2); or

(b) to conduct any further test required under section 29(5),—

commits an offence and is liable to a fine not exceeding 1,000 penalty units.

29A. Shadow testing – The Ministry may conduct testing audits of tobacco products at manufacturers and importers facilities at the cost of the manufacturer and importer.

30. Reports of constituents, additives, and certain business information required – (1) A manufacturer, importer, and exporter of tobacco products must submit to the Ministry on at least an annual basis, unless otherwise prescribed, reports and returns containing the information specified in regulations.

(2) If required by regulations, the information referred to in subsection (1) must be made available to the public in the manner prescribed.

(3) A manufacturer or importer of a tobacco product who fails:

(a) to submit any return required by subsection (1); or

(b) publish any report required by subsection (2), –

commits an offence and is liable to a fine not exceeding 1,000 penalty units.

31. Further Court orders on conviction for an offence –

(1) If a manufacturer, distributor, importer or retailer is convicted of an offence under this Act, the Court may, in addition to any penalty imposed, make an order:

(a) for a manufacturer, distributor or importer, prohibiting the manufacturer, distributor or importer from manufacturing, distributing or

importing tobacco products for a period not exceeding 12 months; or

(b) for a retailer, prohibiting the sale or offering for sale of tobacco products by the retailer for a period not exceeding 12 months.

(2) If a manufacturer, distributor, importer or retailer is convicted 2 or more times for the same offence under this Act, the Court shall make an order under subsection (1).

(3) A person who contravenes a Court order made under subsection (1) shall be guilty of contempt of Court and shall be subject to a fine or imprisonment, or both, for the contempt as the Court shall determine.

PART 5A LICENCES

31A. Licence – (1) A person must manufacture, import or distribute tobacco products in accordance with a licence issued under this Part.

(2) A person who breaches subsection (1) commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding 12 months, or both.

31B. Classes of licence – After receiving and considering an application for a licence in accordance with the requirements of this Act, the Chief Executive Officer may issue a licence of the following classes:

- (a) manufacture licence;
- (b) importer licence; and
- (c) distributor licence;
- (d) hotel license; and
- (e) nightclub license.

31C. Manufacturer licence – A manufacture licence authorises the licensee to manufacture tobacco products on conditions set out in the licence.

31D. Importer licence – An import licence authorises the licensee to import tobacco products including any ingredient, equipment and machinery of tobacco products on conditions set out in the licence.

31E. Distributor licence – A distributor licence authorises the licensee to sell in cartons or distribute tobacco products in cartons on conditions set out in licence.

31F. Hotel owner tobacco licence – A hotel owner licence authorises the licensee to sell tobacco products on conditions set out in the licence.

31G. Nightclub owner tobacco licence – A nightclub owner licence authorises the licensee to sell tobacco products on conditions set out in the licence.

31H. Application for a licence under this Part – (1) An application for the issue of a manufacture licence, import licence or a distributor licence must be in the prescribed form and be accompanied by the prescribed fee.

(2) The Chief Executive Officer must not consider an application for the issue of a licence if the prescribed fee required under subsection (1) has not been paid.

(3) Regulations may be made pursuant to section 35 to prescribe the manner in which an application is to be made under this section.

(4) If information provided by an applicant under this section is false, misleading, defective in any particular, or if any document provided by the applicant under this section is not genuine, false or misleading:

- (a) the applicant commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units; and
- (b) if the applicant has been issued a licence, the licence is automatically cancelled.

31I. Chief Executive Officer when considering licence application – (1) Upon receipt of an application under section 31E, the Chief Executive Officer shall consider the application and within a reasonable time, either:

- (a) issue a licence; or
- (b) advise the applicant in writing that the application has been refused and provide reasons for the refusal.

(2) If an application is rejected on the grounds that it does not comply with the provisions of this Act, the applicant may appeal in writing to the Minister against that decision and if the Minister is satisfied that the provisions of this Act will not be contravened, the Minister may direct that the licence be issued.

31J. Suspension of licence – (1) The Chief Executive Officer may suspend a licence if:

- (a) the licensee has contravened a provision of this Act;
or
 - (b) the licensee has contravened a condition of the licence; or
 - (c) the licensee has been charged or convicted of an offence under this Act.
- (2) Before suspending a licence under subsection (1):
- (a) the licensee must be given a reasonable opportunity to be heard of the intended suspension; and
 - (b) the Chief Executive Officer must provide the licensee with the reasons for which his or her licence is to be suspended.

31K. Cancellation of licence – (1) The Chief Executive Officer may cancel a licence if it is within the best interest of the public to do so.

(2) Without limiting subsection (1), in determining whether it is in the public interest to cancel a licence, the Chief Executive Officer, must consider whether:

- (a) the licensee has contravened a provision of this Act;
or
- (b) the licensee has contravened a condition of the licence; or
- (c) the licensee has been convicted of an offence under this Act; or
- (d) the circumstances of that contravention are such that the licence should be cancelled.

(3) Before cancelling the licence under subsection (1), the licensee must be given a reasonable opportunity to be heard and the Chief Executive Officer must provide the licensee with the reasons for which his or her licence is to be cancelled.

31L. Duration and renewal of licence – (1) A manufacture licence granted to a licensee to manufacture tobacco products, will be valid for a period of 3 years from the date of its grant.

(2) A licence which is granted to an—

- (a) importer; or
- (b) distributor; or
- (c) hotel owner; or
- (d) nightclub owner,

will be valid for a period of 1 year from the date of its grant.

(3) An application for the renewal of a licence under this Part must be made in the approved form and accompanied by the prescribed fee at least 1 month prior to its expiration.

31M. Transfer of licence – (1) A licensee must not transfer a licence issued under this Part except with the prior written approval of the Chief Executive Officer.

(2) A licensee seeking approval of the Chief Executive Officer under this section must make application in the approved form and pay the prescribed fee.

31N. Licences to be displayed – A licence issued under this Act must be fixed and kept by the licensee in a visible place in or upon the premises described in such licence or where the business is being carried on.

PART 6 MISCELLANEOUS

32. Appointment of enforcement officers – (1) The Chief Executive Officer may appoint enforcement officers who are authorised to exercise and carry out the specified functions and powers of the Chief Executive Officer under this Act.

(2) The Chief Executive Officer shall supply every enforcement officer with a warrant, and that warrant shall clearly state the functions and powers that the person appointed has been authorised to exercise and carry out under the Act.

(3) An enforcement officer who exercises or purports to exercise any power conferred under this Part shall have and shall produce if required to do so, the enforcement officer's warrant and evidence of identity.

(4) An enforcement officer who holds a warrant issued under this section shall, on the termination of his or her appointment, surrender the warrant to the Chief Executive Officer.

33. Inspection and investigative powers of enforcement officers—(1) The enforcement officers appointed under section 32 shall have the following powers:

- (a) provided that the place is not a dwelling house or other residential accommodation, to enter the premises of any place where tobacco is manufactured, sold, transported, received, distributed, packaged, or otherwise found or likely to be found or have been present, and to enter any public place, including a workplace, to conduct inspections or investigations during business or operating hours of a workplace or at any other reasonable or necessary time;
- (b) to examine, open, and test any equipment, tools, materials, packages or anything the officer reasonably believes is used or capable of being used for the manufacture, packaging, labelling, storage, distribution, display, advertising or promotion of tobacco products;
- (c) to examine any operation or process carried out on the premises;
- (d) to examine and make copies of or from any books, documents, notes, files, including electronic files, or other records that the officer reasonably believes might contain information relevant to determining compliance with this Act or with regulations made under this Act;
- (e) to interview or question any licensee or other person involved in selling, advertising or promoting, manufacturing, importing, exporting, growing, transporting, packaging, or distributing tobacco products, any owner of the premises, or any person using the premises, and his or her employees, agents, contractors and workers, all of whom must cooperate fully and truthfully with any inspection or investigation;

- (f) to take samples of tobacco or tobacco products or components of products anywhere they are found and have them tested;
- (g) to seize and detain, or order the storage without removal or alteration of any tobacco or tobacco product where ever they may be found, the officer reasonably believes does not comply with the requirements of the Act or regulations, upon providing the licensee or owner of the tobacco products, or if he or she is unavailable, any other person on the place where the tobacco products are located, written notice of the seizure and detention and the grounds for it; and
- (h) to seize and detain and dispose of any tobacco product being sold by a person in a manner which contravenes the requirements of the Act.

(2) If any tobacco product that is seized and detained by an enforcement officer is subsequently determined to meet the requirements of the Act or regulations made under the Act, it shall be returned immediately by the enforcement officers to the place from which it was seized.

(3) If any tobacco product that has been seized or detained is determined not to meet the requirements of the Act or of the regulations, it may be confiscated and destroyed or subject to other disposal, as ordered by a court.

(4) A member of the Police may accompany an enforcement officer exercising powers under this section.

(5) Subsection (1) does not prevent an enforcement officer from entering a dwelling house or other residential accommodation:

- (a) under authority given by or under an enactment other than this Act; or
- (b) with the consent of an occupier, only to the extent necessary for, the following purposes—
 - (i) finding out whether this Act or regulations made under the Act is being complied with in respect of the place entered;
 - (ii) finding out the extent to which this Act is not being complied with in respect of the place entered.

(6) A person commits an offence if the person threatens, assaults or intentionally obstructs or hinders an enforcement officer who is acting in the exercise or performance of his or her powers under this section and is liable to a fine not exceeding 100 penalty units.

34. Duties of enforcement officers – (1) An enforcement officer exercising powers under this Act must identify himself or herself as an enforcement officer to the person who appears to be in charge of any premises where the officer intends to exercise his or her powers.

(2) If asked to do so, the enforcement officer must produce evidence of identity and his or her warrant issued under section 32.

35. Regulations – (1) The Head of State may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may be made for all or any of the following purposes:

- (a) providing for additional smoke free areas;
- (b) develop on-the-spot fines mechanism for the issuing of infringement Notices;
- (c) the creation of controlled purchase operations;
- (d) prescribing requirement for Electronic Nicotine & Non-Nicotine Delivery System.

35A. Fees – (1) For the purpose of this Act, fees are to be prescribed by Regulations made by the Head of State.

(2) The fees are proposed by the Ministry and are subject to consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

36. Evidence by certificate – Despite any other law, in any proceedings under or concerning this Act, including but not limited to a prosecution for an offence, a certificate signed by or on behalf of the Chief Executive Officer and stating:

- (a) that on any date a person was or was not permitted to do or was prohibited from doing any matter or thing under or concerning this Act;
 - (b) that on any date the Minister or Chief Executive Officer or person duly authorised by the Minister or Chief Executive Officer, as the case may require, had made, done, issued or otherwise taken an act permitted or required under or concerning this Act; or
 - (c) the content of any permission or prohibition referred to in paragraph (a) or the content of any act referred to in paragraph (b),—
- shall be sufficient evidence of the matters stated in the certificate and the certificate shall be presumed to be so signed unless the contrary is proved.

37. Service of notices etc. – (1) If under this Act a notice, order, direction, requirement, determination, letter, other document or act of authority is required or permitted to be served on any person by the Minister, Chief Executive Officer or person acting under the authority of the Minister or Chief Executive Officer, the notice, order, direction, requirement, determination, letter, other document or act of authority may be served by:

- (a) delivering it to the person at the nominated address in Samoa of the person in any application to or correspondence from the person to the Minister or Chief Executive Officer; or
- (b) delivering it to the address in Samoa of any solicitor acting as legal representative for the person; or
- (c) sending it by pre-paid post or facsimile transmission to the Samoan postal address or facsimile address, as the case may require, nominated by the person in any application to or correspondence with, or correspondence from the person, to the Minister or Chief Executive Officer; or
- (d) sending it by pre-paid post or facsimile transmission to the Samoan postal or facsimile address, as the case may require, of any solicitor acting as legal representative for the person; or

- (e) notice in Samoan and English published in the Savali and 1 other newspaper circulating in Samoa.
- (2) For all purposes in the case of prepaid post, service is taken to have been effected 2 days after the date of postage.
- (3) For all purposes, in the case of service by facsimile transmission:
 - (a) service is taken to have been effected upon completion of transmission without evidence of garbling or incomplete transmission; and
 - (b) a printed or copied signature shall be sufficient for any notice, order, direction, requirement, determination, letter, other document or act of authority served by facsimile transmission.

38. Transitional provisions – (1) Nothing in section 19(3) applies in respect of the distribution or sale, within 6 months after this Act comes into force, of any article that was:

- (a) manufactured before the commencement of this Act; or
 - (b) ordered before commencement of this Act from the manufacturer or distributor otherwise than by the placing of a standing order that required confirmation, or that was subject to cancellation, after that date.
- (2) Despite sections 17, 19 and 20, where it is so required by a contract entered into before the commencement of this Act, the name of any manufacturer or importer of tobacco products or the trade mark of any tobacco product may be used for 6 months after the date this Act comes into force, otherwise than in association with a tobacco product, in a representation to the public:
- (a) that promotes or is associated with an organised activity; or
 - (b) that acknowledges financial or other contributions made by the manufacturer or importer of the tobacco product toward any such activity.
- (3) The first reports required by section 30 shall be submitted to the Chief Executive Officer:

- (a) on or before the 6th month after this Act comes into force, in the case of cigarettes and cigarette tobacco; and
- (b) by the date specified by the Chief Executive Officer by notice in writing to the manufacturer or importer, in the case of any other tobacco product.

REVISION NOTES 2008 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 to 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to up-date references to offices, officers and statutes.(e.g. Reference to the Liquor Act 1971 replaced with Liquor Act 2011)
- (b) Insertion of the commencement date
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” changed to “a/an”
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are”
 - “shall be deemed” changed to “is/are taken”
 - “at any time” removed
 - (iii) Use of plain language
 - “notwithstanding” changed to “despite”
 - “in the case of” changed to “for”
 - “in accordance with” changed to “under”
 - (iv) Numbers in words changed to figures
 - (v) Removal of superfluous terms
 - “of this section”
 - “the provisions of”
 - (vi) Removal of “and” from “and/or”
 - (vii) References to “Broadcasting Ordinance 1959” changed to “Broadcasting Act 2010” and “Trademarks Act 1972” changed to “Intellectual Property Act 2011”.

The following amendments have been made to this Act since its enactment:

By the *Tobacco Control Amendment Act 2019*, No.4 (commenced on 16 August 2019)

| | |
|-------------------------|---|
| Section 2 | inserted “and includes owners of public transport” for the definition of “employer” inserted “electronic nicotine and non nicotine delivery systems and” for the definition of “tobacco product” omitted “indoor or enclosed” for the definition of “workplace” inserted new definitions “carton”, “distribution”, “import”, “licence”, “licensee”, “National Tobacco Control Committee”, “occupier”, “prescribed fee”, “tobacco industry” |
| new Part 2A | new part inserted after section 7 |
| Section 18(1)(a) | repealed |
| Section 23A | new section inserted |
| Section 24(2A) | new subsection inserted |
| Section 29A | new section inserted |
| Part 5A | new part inserted after section 31; |
| Section 35 | inserted new subsection (2); |
| Section 35A | new section inserted. |



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Health.*
