

BILL FOR AN ACT

To adopt measures consistent with the objective of the World Health Organization's Framework Convention on Tobacco Control (FCTC), to which the Republic is a party to, protect present and future generations against the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke; to repeal and replace sections of Chapter 10 of Title 11 of the Palau National Code regulating the sale and distribution of tobacco; to improve the tobacco license application process; to ban the promotion and advertisement of tobacco, brand-stretching, or sponsorship by tobacco companies; to ban sweepstakes, contests, and rebates associated with tobacco products; to ban deceptive packaging and labeling of tobacco products; to update and strengthen measures regarding distribution, purchasing, and farming of tobacco; to protect individuals from the hazards of second-hand smoke; to regulate disclosure of tobacco constituents and emissions; to prohibit illicit trade of tobacco products; to establish improved enforcement and inspection measures; to set up a tobacco control act administration and enforcement fund; to set up a tobacco control and treatment fund; and for other purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

**Section 1.** Legislative findings and purpose.

- (a) Finding that the use of tobacco can cause devastating health and economic losses to individuals, families and the community;
- (b) Finding that the diseases associated with the use of tobacco result in lost productivity, premature deaths, and significant healthcare costs;
- (c) Finding that an alarming number of children, youth and adults in Palau are current users of any tobacco product;
- (d) Finding that the Republic of Palau laws relating to the licensing and sales of tobacco need to be revised and updated for more effective and efficient licensing and enforcement;
- (e) Finding that comprehensive non-price measures are an effective and important means of reducing tobacco consumption;
- (f) Finding that the public has been deceived by the tobacco industry and deprived of meaningful information about the hazards of tobacco usage;

(g) Finding that the public is entitled to be free from misleading messages and deceptive advertising, which portray tobacco as a desirable product;

(h) Finding that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products;

(i) Finding that the vast majority of tobacco users begin using, and become addicted to tobacco while they are minors;

(j) Finding that many young persons are not possessed of sufficient capacity or maturity and judgment to make appropriate decisions about using tobacco on their own;

(k) Finding that scientific evidence has unequivocally established tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer;

(l) Finding that secondhand smoke is especially hazardous to children, elderly people, pregnant women, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;

(m) Finding that a significant amount of secondhand smoke exposure occurs in the workplace, and that employees who work in smoke-filled offices or work areas suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function;

(n) Finding that smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke;

(o) Finding that research have determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the

exposure of nonsmokers to secondhand smoke; and moreover, secondhand smoke cannot be reduced to safe levels by high rates of ventilation;

(p) Finding that the government has a legitimate public health function and duty to inform individuals about the hazards of tobacco use and exposure to secondhand smoke;

(g) Finding that there is a need to protect individuals from the hazards of secondhand smoke;

(r) Finding that consumers have a right to know the toxic constituents of tobacco products and the emissions they produce;

(s) Finding that elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to sub-regional, regional and global agreements, are essential components of tobacco control;

(t) Finding that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons; and

(u) Finding that high price and tax measures can significantly reduce healthcare costs because less consumption means less disease;

(v) Finding that high tax measures can significantly increase government revenue because the increased tax per pack brings in more new revenue than is lost from the decrease in the number of packs sold;

(w) Finding that an institutional framework made up of focal points for tobacco control as delineated in this act, needs to be financed locally to implement, monitor, enforce, and sustain the objectives and actions mandated by this act, and to coordinate with actions required under the Framework Convention on Tobacco Control;

(x) Finding that the private sector has a significant role to play in controlling the use of tobacco.

(y) The purpose of this legislation is to protect the health and well being of

Palau's citizens, residents, and tourists by replacing the current tobacco-related laws codified in Chapter 10 of Title 11 of the Palau National Code with more appropriate and more effective law.

**Section 2.** Title. This Act shall be known and may be cited as the "Tobacco Control Act of 2005."

**Section 3.** Repealer. RPPL 4-25 and RPPL 5-7 §(8) and amendments through RPPL 4-25 and RPPL 5-7 §(8) to the following laws, which constitute portions of Chapter 10 of Title 11 of the Palau National Code regarding tobacco are hereby repealed: PDC § 300; PDC § 301; PDC § 302; PDC § 303; PDC § 304; PDC § 305; PDC § 306; PDC § 307; PDC § 308; PDC § 309; PDC § 310; PL 6-8-37; PL 7-3-32, and repealed RPPL 3-62 entirety.

**Section 4.** Definitions. Unless otherwise stated:

(a) "Applicant" means the person in whose name a license is to be issued as stated in the license application.

(b) "Adult care facility" means all land, buildings, structures and improvements within the boundaries of any real property which is used primarily for the care of adults with special needs or senior citizens.

(c) "Bar/Club" means an establishment that is devoted to the servings of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages, including but not limited to taverns, nightclubs, cocktail lounges and cabarets.

(d) "Childcare facility" means all land, buildings, structures and improvements within the boundaries of any real property which is used primarily for childcare.

(e) "Commercial purpose" is the intent to obtain direct or indirect financial gain from the sale, distribution, exportation, importation, or manufacture of tobacco.

(f) "Distribute" means to sell, give, serve, supply, exchange, convey, consign, deliver, furnish, or transfer tobacco to another for a commercial purpose, or as a sample,

gift, or prize with or without consideration.

(g) “Distributor” means a person that sells, gives, serves, supplies, exchanges, conveys, consigns, delivers, furnishes, or transfers tobacco to another for a commercial purpose, or as a sample, gift, or prize with or without consideration.

(h) “Exporter” means any person who distributes tobacco from the Republic of Palau to another country.

(i) “Educational facility” means all land, buildings, structures, and improvements within the boundaries of any real property, which is used primarily for educational purposes.

(j) “Employer” means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

(k) “Enclosed” Area/Place/Space means all space between a floor and ceiling which is enclosed on all sides by solid wall or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structures.

(l) “Elaus” means a whole or divided betel nut that is distributed singly either already prepared with all the additives such as lime, leaf, and tobacco, or with additives to be added by the consumer.

(m) “Generally accepted means of identification” means a valid Palau or other country government issued photographic identification, which specifies the date of birth.

(n) “Government” means the Republic of Palau National Government or state governments, or semi-governmental agencies.

(o) “Fiscal year” means the year commencing on October 1 and ending on September 30.

(p) “Healthcare facility” means all land, buildings, structures, and improvements

within the boundaries of any real property, which is used primarily for medical or healthcare purposes, including diagnosis, prevention and treatment of diseases or physical and mental disabilities.

(q) “Importer” means any person who buys tobacco located in a foreign country for distribution in the Republic for commercial purposes.

(r) “Licensee” means the person or employee or agent thereof to whom a license to distribute, export, import or manufacture tobacco has been granted in accordance with the provisions of this Act and regulations promulgated thereunder.

(s) “Manufacture” means to fabricate, produce, process or package and/ or label tobacco.

(t) “Manufacturer” means a person who manufactures tobacco.

(u) “Minor” is a person younger than 21 years of age.

(v) “Person” means any individual, partnership, corporation, or other association of individuals, or of any group or combination of the above acting together or as a unit, and includes any proprietor, firm, partnership, corporation, franchise, organization, agency, association or institution.

(w) “Place of Employment” means any area under the control of government or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, offices, employee lounges and restrooms, conference and classrooms, vehicles, employee cafeterias, hallways and stairs. A private residence is not a “place of employment” unless it is used as a childcare, adult day care, health care or religious facility.

(x) “Premises” means the interior and exterior space of the establishment licensed for the distribution or manufacturing of tobacco as specified by the license issued pursuant to this Act and regulations promulgated thereunder.

(y) “Public place” means any place to which members of the general public or segments of the general public ordinarily have access by express or implied invitation.

Any place or part thereof used primarily as a private residence shall not be considered a public place under this Act.

(z) “Religious facility” means all land, buildings, structures, and improvements within the boundaries of any real property, which is used primarily for religious purposes.

(aa) “Restaurant” means any eating establishment which gives or offers for sale food to the public, guests, students, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including but not limited to any coffee shop, deli shop, cafeteria, sandwich stand, private and public school cafeteria, catering facilities, except that the term “restaurant” shall not include establishments defined in Section 5 (c).

(bb) “Smoking” means inhaling, exhaling or handling ignited tobacco.

(cc) “Sports facility” means all land, buildings, structures, and improvements within the boundaries of any real property which is used primarily for the general public to engage in sporting activities such as to assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(dd) “Tobacco” means the processed leaves of plants from the genus *Nicotiana* or species *tabacum* used for smoking, chewing or as snuff, and includes all products which contain tobacco in any form in an amount that is more than an incidental ingredient or component and that is intended for human consumption and may include all parts and materials, such as filters, rods and similar matter; or any product other than tobacco that contains nicotine in an amount that is more than incidental and is intended for human consumption, including but not limited to nicotine water and nicotine candy.

**Section 5.** State law. Nothing in this Act shall preclude any State from enacting law not in conflict with the provisions of this Act and regulations promulgated thereunder.

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**Section 6.** Application Process. The Minister of Administration shall promulgate regulations prescribing the procedure, forms and fees for the license

application process.

**Section 7.** License required; period of effectiveness.

(a) No person shall distribute, export, import or manufacture tobacco in the Republic without a valid license issued by the Minister of Administration in accordance with the provisions of this Act and regulations promulgated thereunder.

(b) No person shall distribute tobacco products for resale to any person who does not have a valid tobacco products license.

(c) No person shall be issued a license under this act without a business license authorized under 40 PNC §1501 as a prerequisite to engage in business in the Republic.

(d) All tobacco distributor licenses authorized under this act shall expire at the end of the fiscal year.

**Section 8.** Classes of tobacco licenses.

The Minister of Administration is authorized to issue tobacco licenses as follows:

(a) Tobacco Distributor License-Retail: permitting distribution of tobacco to consumers.

(b) Tobacco Distributor License-Wholesale: permitting distribution of tobacco to only persons in the Republic of Palau with valid tobacco retail license issued pursuant to this Act.

(c) Tobacco Distributor License-Export: permitting exportation of tobacco from the Republic of Palau to other countries for commercial purposes.

(d) Tobacco Distributor License-Import: permitting importation of tobacco into the Republic of Palau for commercial purposes.

(e) Tobacco Distributor License-Manufacture: permitting manufacture of and/ or packaging and labeling of tobacco.

**Section 9.** License Fees.

Every three (3) years, the Minister of Administration shall review and propose through regulation, as necessary, based on current health costs and recommendations from

the Minister of Health, new fees that shall either be equal to or higher than the fees for the current year in question.

(a) The initial license fees set by regulation, and thereafter, shall either be equal to or higher than the following:

- (1) Tobacco Distributor License-Retail: \$1,000.00
- (2) Tobacco Distributor License-Wholesale: \$2,500.00
- (3) Tobacco Distributor License-Import: \$5,000.00
- (4) Tobacco Distributor License-Export: \$5,000.00
- (5) Tobacco Distributor License-Manufacture: \$5,000.00

(b) Fees for licenses which become effective after the beginning of the fiscal year shall be prorated on a quarterly basis.

**Section 10.** Licenses for multiple activities; separate places of business.

(a) A person engaged in two or more of the activities set forth in Section 9 of this Act must obtain a license for each activity.

(b) A separate and appropriate license must be obtained for each separate place of business.

**Section 11.** Licensing limitations.

Licenses shall be issued only in accordance with this Act and regulations promulgated thereunder. Licenses are not transferable. A licensee is limited to engaging in only the commercial activities licensed as stated in the licensing document, and any regulations promulgated thereunder. The license is valid only for the conduct of business on the premises as specified in the application for the license.

**Section 12.** License application, review, denial and appeal.

(a) Applications shall be submitted in the name of the applicant and signed by the applicant:

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(b) Each application shall be accompanied by a non-refundable application fee in an amount set by this Act and regulations promulgated thereunder. No license shall be

processed unless the applicant has deposited the full amount due for the license with the National Treasury.

(c) Applications shall at a minimum include the following information:

(1) The applicant's name and manager's name, and home and business phone numbers, and home and business mailing addresses of both the applicant and the manager.

(2) A description and diagram of the location to be licensed showing the proximity of all structures within 250 feet of the licensed property and identifying each structure; and

(3) The class of license(s) desired.

(4) For manufacturer licenses, the applicant shall provide documentary proof that its premises, equipment and facilities meet sanitation and other health standards established by law and regulation.

(5) A certified copy of the applicant's police clearance record.

(6) A copy of the applicant's national business license authorized under 11 PNC 1501, and a copy of the applicant's state business license, if applicable.

(d) Each application shall be prepared in duplicate and copies provided to the Ministers of Administration and Health.

(e) Applications received, regardless of the date submitted, shall be grouped and tabled with other applications to be reviewed during the third week of each quarter by the Minister of Administration and the Minister of Health.

(f) An applicant, or licensee, shall advise the Minister of Administration within five days of any changes in the information listed on the application.

(g) Renewal applications shall contain information deemed necessary by the Minister of Administration in accordance with regulations promulgated thereunder.

(h) An applicant who fails to provide information required by the application or additional needed information required by the Minister of Administration in processing the

application shall be denied a license:

(1) Applicants denied a license may appeal the denial to the Trial Division of the Supreme Court in accordance with the Title 6 of the Palau National Code, the Administrative Procedures Act.

(2) If a license cannot be granted because the application lacks sufficient information or further information is needed, the Minister of Administration shall immediately inform the applicant in writing of the information required within 15 days of reviewing the application. Such notice shall be documented and kept in the licensee's application file.

(3) Applicants denied a license may reapply at any time.

(i) The Minister of Health shall issue a written report to the Minister of Administration within fifteen days of receiving the application(s). The written report shall assess the health and community impacts, and recommend for or against issuance of the license(s) based on the criteria set forth in this Act and regulations promulgated thereunder.

(j) The Minister of Administration shall rely on the recommendations of the Minister of Health to issue or deny license(s); and shall make a written report setting forth the reason(s). The report shall be transmitted to the applicant within 60 days after the application was submitted, and with copies to the Minister of Health and the applicant's file.

**Section 13. Licensing criteria.**

(a) No license shall be granted for manufacturing tobacco unless the premises meets all standards established under this Act and regulations as to sanitation, health, facilities, equipment, ingredients, manufacturing process, content, packaging and labeling.

(b) All licenses shall be denied if:

(1) the applicant has not paid or lawfully contested the payment of past-

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due taxes or fines owed to the national government;

(2) the applicant has been convicted of two violations of this Act within the

immediately preceding fiscal year, or has been convicted of an offense in any jurisdiction in the last ten years which constitutes a felony under the laws of the Republic;

(3) the applicant has had a license revoked under this Act within the preceding three years;

(4) the applicant is applying for the licensing of premises located within 250 feet of any childcare, healthcare, educational, religious or sports facility, except that:

(i) an establishment licensed prior to the effective date of this Act may be issued renewal licenses for one more fiscal year, after which the establishment will not be eligible;

(ii) an establishment licensed prior to the construction of a childcare, healthcare, educational, religious or sports facility; may be issued renewal licenses for one more fiscal year, after which the establishment will not be eligible;

(5) the applicant misrepresents a material fact in the license application;

(6) the applicant does not have current National Government and, if applicable, State Government business licenses; or

(7) the Ministry of Health issues a report under Section 13(i) herein recommending against granting the proposed license based on health and community impacts.

**Section 14. License status as public record.**

The Minister of Administration shall maintain a list of all licenses issued with a copy forwarded to the Minister of Health, which shall be made available for inspection, by any person during regular business hours. The list shall include all information deemed

relevant by the Minister including the name of the licensee, the class of license, the premises licensed, the date of initial issuance, and the date(s) of any suspension(s) or

revocation(s), if any. The Minister of Administration shall provide an updated list to the Minister of Health at the beginning of each quarter.

**Section 15. Licensee records.**

Every person licensed to distribute, export, import, or manufacture tobacco shall maintain copies of all business records including bills of lading, invoices, receipts and any other documents necessary to properly record the licensed commercial activities and shall include all records regarding the payment and calculation of gross revenue taxes, wage and salary taxes, and social security contributions. The Minister of Administration may establish further recording requirements by regulation. All documents required to be created and maintained under this section shall be kept for a period of six years from the date of creation and shall be made available for inspection to the Minister of Administration and the Minister of Justice.

**Section 16. Posting licenses and signs.**

Every person licensed under subsections 9(a), 9(b), 9(c), 9(d) and 9(e) of this Act shall post the original license(s) in a conspicuous place on the licensed premises and shall post signs as required by law regarding the prohibition of sales to minors and regarding health issues. The Minister of Health shall promulgate regulations regarding the dimensions, characteristics, and wording for both types of signs. The Minister of Health, at least twice a year, shall update and prescribe new dimensions, characteristics and wording for the sign on health issues.

**Section 17. Tobacco advertising prohibited.**

(a) No person shall advertise or otherwise promote or participate in the advertisement or promotion of any tobacco, brand, manufacturer or seller through any local media or by any means, directly or indirectly, that is intended to have or is likely to have the direct or indirect effect of creating an awareness of or promoting the purchase or use by

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a consumer of tobacco or a tobacco brand, or of promoting a tobacco manufacturer or seller. For purposes of this Section, advertisements and promotions include words,

messages, mottos, slogans, letters, numbers, pictures, images, graphics, sounds, or any other auditory, visual, or sensory matter, in whole or part, that are commonly identified or associated with a tobacco, brand, manufacturer, or seller.

(b) No person shall distribute, import, export, manufacture, broadcast or display materials prohibited under subsection (a).

(c) Notwithstanding the provisions of subsections (a) and (b), the following shall be allowed:

(1) the exposure of tobacco or a tobacco package at its place of manufacture or sale or in the manufacture-retail distribution chain;

(2) commercial communications by persons involved in manufacturing, importing, exporting or distribution of tobacco which is directed solely at other persons in manufacturing, importing, exporting or distribution of tobacco;

(3) the mere notification of the availability of tobacco for sale, without any reference to or display of brands;

(4) a local internet web site for any particular tobacco company, so long as it presents factual information about the business and does not promote tobacco, as well as documents prepared for and distributed only to employees, shareholders, or investors;

(5) commentary, opinion, report, editorial, or political discourse related to tobacco or manufacturers so long as it is not made in exchange for remuneration or other direct or indirect consideration from a tobacco company or any of its agents;

(6) depiction of or reference to a tobacco or brand made in any artistic, literary, scientific, educational, or entertainment production, performance, writing or other work so long as it is not done in whole or part in exchange for remuneration or other direct or indirect consideration from a tobacco company or

any of its agents.

**Section 18.** Brand-stretching prohibited.

(a) No person shall advertise, display for sale or distribution, or distribute any non-tobacco item that contains any 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, manufacturer, or seller. For purposes of this provision, non-tobacco items include but are not limited to such things as clothes, caps, bags, umbrellas, ashtrays, matches, lighters, coasters, dishes, display racks, clocks, sales counter mats.

(b) No person shall display 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, manufacturer or seller on a building, such as a club, restaurant, stadium or other place which is not primarily a tobacco business.

(c) No person shall use the brand name, trademark or other sign, symbol, logo or similar visual matter, or parts or combinations thereof, commonly associated with any brand of tobacco.

(d) No person shall manufacture or distribute any product designed for or likely to appeal to children that evokes or is likely to evoke an association with a tobacco product, including but not limited to, candy or gum cigarettes or other sweets or snacks in the form of tobacco products.

**Section 19. Tobacco sponsorships prohibited.**

No person shall cause the tobacco sponsorship of any event. For purposes of this section sponsorship means the public attribution, acknowledgment, association or identification, for commercial purposes, of a tobacco manufacturer, seller, brand, or product with, on, or in connection with:

(a) an entertainment, sporting, recreational, educational, cultural, or other

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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 or seller; or

(d) a building, institution, stadium, organization or other entity that is not a tobacco manufacturer or seller.

**Section 20.** Tobacco sweepstakes, contests, rebates, etc prohibited The operator of a business and a manufacturer or a distributor of tobacco products may not:

(a) supply or distribute tobacco free of charge or furnish tobacco for promotional purposes of any kind to consumers;

(b) reduce the retail price of tobacco on the basis of quantity, otherwise than as part of regular marketing operations, or offer tobacco as a gift, prize, or free of charge in exchange for a coupon or otherwise without charge, or grant a rebate on the market price of tobacco to consumers;

(c) offer consumers gifts, cash prizes, giveaways or a right to participate in a lottery, contest, sweepstakes or game or any other form of benefit, as consideration for a purchase of tobacco or on presentation of proof of purchase of tobacco.

**Section 21.** Prohibitions on tobacco packaging and labeling. No person shall distribute, export, import, manufacture, purchase for commercial purposes, or display tobacco:

(a) unless it is contained in anything other than a generic package that contains all required health labeling information in English and/or Palauan. For purposes of this section generic packaging and labeling is that which presents information limited to brand name, manufacturer's name, type of product (e.g., cigarettes, smokeless tobacco, etc.) and price, and does not include words, messages, mottos, slogans, letters, numbers, pictures, images, graphics, or any other visual or sensory matter, other than health messages, content

and additives disclosures, and other information required or permitted herein and by regulation;

(b) which contains on each unit packet and package of tobacco products, and any outside packaging and labeling any false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include but are not limited to words or descriptors such as “light”, “mild”, “ultra-light”, “low tar”, “slim”, or similar descriptors, or graphics associated with such descriptors.

(c) unless the outside packaging and labeling of each unit packet and package of tobacco products or wrapper in the case of cigars, contains permanently affixed health warnings describing the harmful effects of tobacco use, and may include other appropriate messages as described in regulation. These warnings and messages:

- (1) shall be approved by the Palau Tobacco Control Program;
- (2) shall be rotating;
- (3) shall be in English and/or Palauan;
- (4) shall be large, clear, visible and legible;
- (5) should be 50% or more of the principle display areas but shall be no less than 30% of the principal areas;
- (6) may be in the form of or include pictures or pictograms.

(d) unless the outside packaging and labeling of each unit packet and package of tobacco products contains, in addition to warnings, information on the relevant constituents and emissions of the tobacco product, in English and /or Palauan, and as defined by regulation.

(e) unless the package contains a package insert, written in English and/or Palauan, and complies with all applicable regulations.

(f) which does not contain the name and license number of the manufacturer, and as applicable, wholesaler, importer, and exporter; permanently affixed on its package, and

on any larger package, box, or container holding a number of tobacco product packages;

(g) which does not contain the manufacture serial number, lot number, or batch number and the name of the country in which it was manufactured;

(h) unless the unit packets and packages of tobacco products for retail and wholesale use that are sold in Palau's domestic market carry the statement: "Sales only allowed in Palau or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market;

(i) This measure shall become effective within one year of its adoption or by February 27, 2008, in accordance with Article 11.1 of the Framework Convention on Tobacco Control.

**Section 22. Prohibitions on distribution, purchasing and farming.**

(a) No person shall distribute, export, import, manufacture, purchase for commercial purposes, or display tobacco . . . :

(1) using mail order or internet sales;

(2) inside, or within 250 feet of, any childcare, healthcare, educational, religious or sports facility;

(3) through a vending machine;

(4) for sale in such a way that a consumer may handle any tobacco directly prior to purchase without the assistance of a sales clerk or other employee of the seller;

(5) unless it is contained in an original package;

(6) as free samples, in return for the purchase or sales of goods, or as part of any giveaways;

(7) to any individual who is under 21 years of age; including offering to

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purchase tobacco for a minor;

(8) to any individual who does not present a driver's license or other

generally accepted means of identification that describes the individual as twenty-one (21) years of age or older, contains a likeness of the individual, and appears on its face to be valid, unless the licensee or employee knows the person to be at least 30 years of age.

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(10) using or employing any minor to handle any tobacco product;

(b) No person shall distribute rolling papers to any minor;

(c) No person shall purchase tobacco through mail order or internet;

(d) No person shall grow anywhere in the Republic the plant from the genus *Nicotiana* or species *tabacum*;

(e) Compliance with the provisions of this Act shall not be construed so as to relieve

tobacco manufacturers or sellers of any common law or statutory duty to fully warn consumers of all dangers associated with tobacco use, nor shall it be admissible as evidence in any action under RPPL 5-31, as amended.

**Section 23. Smoking in Public Places.**

The legislature finds and declares that smoking in public places is a matter of nationwide interest and a major public health concern, and the purposes of this section are (1) to protect the public health and welfare by prohibiting smoking in all public facilities in the Republic of Palau; (2) to restrict smoking in areas of employment where employees are forced to spend a great portion of their day, in order to insure their health and welfare; and (3) to guarantee the right of nonsmokers to breathe smoke-free air; and (4) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

(a) Smoking restricted in enclosed places of employment.

(1) No employer shall knowingly or intentionally permit, and no person

shall engage in, the smoking of tobacco products in an enclosed space at a place of employment, or in other enclosed places of employment specified by regulation

promulgated by the Ministry of Health to protect the health and welfare of workers in the Republic. This includes, but not limited to all work areas, all government owned or leased or funded offices, facilities and vehicles, airports, auditoriums, banquet facilities and meeting rooms, restaurants, bars/clubs, hotels/motels, lobbies, movie theaters and entertainment venues, private offices, commercial office buildings, elevators, hallways, cafeterias, employee lounges, stairs, restrooms, company vehicles, commercial buses, taxis, other public conveyances, and all other enclosed facilities.

(2) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products outside any enclosed place of employment within 25 feet of any of the outermost walls, windows, exits/entrances of the place of employment, or smoke within an outdoor or open air sitting area or waiting area of a public establishment.

(3) For purposes of this section, "place of employment" does not include any of the following:

(i) Fifty percent of the guest room accommodations in a hotel, motel, or similar transient lodging establishment.

(ii) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.

(iii) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

(iv) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.

(b) Smoking restricted in schools, sports facilities, child and adult care facilities,

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and healthcare facilities. Secondhand smoke is especially hazardous to children, the youth, the elderly, and the sick. In addition, smoking is inconsistent with facts and values taught

students in schools, promoted by health providers, and pursued and exemplified by athletes. Therefore, the legislature declares that smoking in schools, childcare and adult care facilities, sports facilities and healthcare facilities is a matter of nationwide interest and concern and requires strict regulation. Therefore, smoking of tobacco products is prohibited, without exception, within the interiors, and on or about the indoor and outdoor premises or grounds of:

- (1) all educational facilities;
- (2) all sports facilities;
- (3) all childcare and adult care facilities; and
- (4) all healthcare facilities in the Republic.

(c) Smoking is also prohibited within the interiors of the facilities, and on or about the indoor and outdoor premises that are borrowed, rented or leased temporarily for activities such as banquets, conferences, workshops, meetings, tournaments or all other events or functions of pertaining to education/school, youth, sports, childcare, adult care or health.

(d) Premises/facilities shall include but not limited to all areas within the designated property or compound of the school, sports arena, childcare, adult care or healthcare facility including open hallways, walkways, indoor or outdoor waiting areas, and stairs, side walks and parking lots, open but covered outdoor sitting areas, buses, and all other vehicles. Premises/facilities shall also include all areas within the designated property or compound in which functions, conferences, or events related to education/school, sports, childcare, adult care or healthcare are being carried out.

**Section 24. Obligation of Employers or Managers of Smoking-Restricted Places.**

(a) Within 90 days of the effective date of this act, each employer or managing official having an enclosed place of employment located within the Republic shall adopt,

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implement, make known and maintain a written no-smoking policy which shall contain the following requirements: Smoking shall be prohibited in all enclosed facilities within a

place of employment, within an outdoor or open air sitting or waiting area of a public establishment, and outside within 25 feet of any of the outermost walls of the place of employment without exception.

(b) Any employer, the Minister of Health, the Minister of Education, the Minister of Community and Cultural Affairs and management officials for childcare facilities, adult care facilities, sports facilities , and other school systems and health facilities for which smoking is restricted or prohibited in Section 24 herein shall take all reasonable steps to ensure that no person smokes in violation of the provisions of this Act, including: (1) posting clear and prominent no-smoking signs as established by regulation; (2) asking an offending person to stop smoking; (3) demanding that the offending person who continues to smoke leave the premises, or in the instance of public transportation, leave the conveyance at the next scheduled stop; and (4) seeking the assistance of law enforcement personnel in cases where the offending person refuses to stop smoking or leave the premises or public conveyance.

(c) For purposes of this subdivision, "reasonable steps" does not include (1) the physical ejection of the offending person from the place of employment or (2) any requirement for making a request to an offending person to refrain from smoking, under circumstances involving a risk of physical harm to the employer, any employee, or management official.

**Section 25.** Prohibition of smoking on airline flights to and from Palau, and between points in Palau. The legislature also finds that in order to insure a healthy working environment for those residents of Palau who are employees in the airline industry and who travel to and from Palau or between points in Palau on a regular basis confined to the small enclosed space of an airplane cabin with no possibility of air separation for the duration of their working hours and in order to ensure the health of airline passengers

confined to the same small enclosed space for a number of hours, it is necessary to ban smoking on flights to and from Palau, and between points in Palau.

(a) No person shall smoke any tobacco product on board the aircraft of any flight that takes off and/or lands on Palau, from the point of embarkation to the point of debarkation, for the duration of the flight to and/or from Palau.

(b) No person shall smoke any tobacco product on board the aircraft of any flight that takes off and lands between points in Palau, from the point of embarkation to the point of debarkation, for the duration of the flight within Palau.

(c) Notwithstanding any other provision of this section, the prohibition in this section shall be enforced by the airline personnel operating the aircraft in the same manner as any other rule or regulation authorized to be enforced by airline personnel in regard to passenger behavior on board aircraft.

**Section 26.** Contents and Emissions of Tobacco Products.

(a) Any tobacco product distributed in the Republic shall be subject to tests and measurements regarding its content and emissions according to guidelines proposed by the FCTC's Conference of the Parties (COP). The Division of Environmental Health shall be responsible for such tests, and the Minister of Health shall promulgate regulations regarding (a) the contents and emissions of tobacco products, (b) mandate for manufacturers and importers of tobacco products to report on their product contents and emissions, and (c) public disclosure of information about the toxic constituents of the tobacco products and the emissions that they may produce. The regulations shall be proposed for adoption not more than 180 days from when COP proposes the guidelines.

(b) Until such time regulations are adopted, manufacturers and importers of tobacco products must disclose to the Division of Environmental Health information about the contents and emissions of their tobacco products within 90 days from the date of action of this act.

**Section 27.** Illicit trade in tobacco products.

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(a) All forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and contraband cigarettes are prohibited.

(b) The Minister of Administration, through its divisions of Customs and Taxation, within 180 days of the adoption of this law shall promulgate regulation to: (a) develop a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade; (b) monitor and collect data on cross-border trade in tobacco products, including illicit trade, and exchange information among the appropriate agencies of the Ministry of Health, Ministry of Commerce and Trade, and the Ministry of Justice in accordance with national law and relevant applicable bilateral or multilateral agreements; (c) take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally friendly methods where feasible, or disposed of in accordance with national law and regulations; (d) adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction; (e) adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products; and (f) information collected pursuant to part (b) and (d) of this paragraph shall as appropriate, be provided in aggregate form in periodic reports to the Conference of the Parties, in accordance with Article 21 of the Framework Convention on Tobacco Control.

(c) The government of the Republic of Palau, as appropriate and in accordance with national law, promote cooperation between national agencies, as well as relevant regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation at regional and sub-regional levels to combat illicit trade of tobacco products.

**Section 28. Regulations.**

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(a) The Minister of Administration shall promulgate regulations within 90 days of the enactment of this law governing sections 7, 8(a), 13(b) and (f), 16 and 28(b) of this

Act.

(b) The Minister of Health shall promulgate regulations within 90 days of the enactment of this law governing sections 13(c)(4), 13(i), 14(a), 17, 22(d) and (e), 24(a)(1), and for 27(a) of this Act within 180 days from when COP proposes guidelines.

(c) The Minister of Justice shall promulgate regulations within 90 days of the enactment of this law governing Section 33 (b)(4) and (h)(2).

**Section 29.** Inspection authority.

(a) All records required to be maintained under this Act and regulations promulgated hereunder shall be kept in a place which is directly accessible from the licensed premises.

(b) To ensure compliance with the provisions of this Act the Minister of Justice, the Minister of Administration, and personnel authorized in writing by either Minister, shall have the right to enter and have immediate access to any part of the licensed premises, at any time the licensed premises are being used or are otherwise occupied by an employee or agent of the licensee, and without notice or legal process, to inspect the premises, and to seize and copy any and all business documents and records therein.

(c) To implement Section 13(c)(4), and ensure compliance with Section 14(a), personnel from the Division of Environmental Health, and other personnel appointed by the Minister of Health, shall have the right to enter and have immediate access to any part of the licensed premises, at any time the licensed premises are being used or are otherwise occupied by an employee or agent of the licensee, and without notice or legal process, to inspect the premises according to standards established under this Act and regulations as to sanitation, health, facilities, equipment, ingredients, manufacturing process, content, packaging and labeling, and to seize any and all equipment, ingredients, or products, including copying any and all business documents and records therein related to the

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manufacturing or packaging and labeling of tobacco.

(d) To ensure compliance with sections 24, 25, 26, and 27, personnel from the

Division of Environmental Health, and others appointed by the Minister of Health and the Minister of Justice shall have the right to enter and have immediate access to any part of the premises, including the airplane, at any time the premises is being used or are otherwise occupied by employees or management, or passengers, employees or agents of the airline, and without notice or legal process, to inspect the premises.

(e) Every person who denies or attempts to deny authorized personnel the right to inspect as provided in the foregoing sections, shall be guilty of obstructing justice in violation of 17 PNC § 2501.

**Section 30. Enforcement.** Enforcement of this Act shall be through the issuance of citations for violations.

(a) The enforcement of this Act in its entirety shall be the responsibility of the Bureau of Public Safety of the Ministry of Justice;

(b) The enforcement of sections 13(c)(4), 14(a), 22, 24, 25, 26 and 27 will be the primary responsibility of the Division of Environmental Health and Sanitation of the Ministry of Health, and assisted by the Bureau of Public Safety of the Ministry of Justice.

(c) The enforcement of sections 18 and 22 will be the primary responsibility of the Division of Customs of the Ministry of Administration, and assisted by the Bureau of Public Safety of the Ministry of Justice.

**Section 31. Law enforcement exemption.** No person, including minors, shall be held criminally or civilly liable for engaging in conduct which would otherwise constitute a violation of this Act if such person is a law enforcement officer, or acting at the direction of a law enforcement officer, in the course of an investigation authorized in writing by the Minister of Justice.

**Section 32. Penalties.**

(a) License, records, and sign violations:

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(1) Every person who violates, assists in violating, or fails or refuses to comply with:

(i) sections 8, 11, 12, and 17 shall be fined up to \$5,000 but not less than \$1,000 or imprisoned not more than 15 days or both, and shall be required to pay the appropriate license fee, if any;

(ii) Section 17 of this Act shall be fined up to \$500 but not less than \$100 or imprisoned not more than 7 days, or both.

(2) The criminal penalties imposed under this section shall be in addition to any civil penalty imposed under law or regulation.

(b) Distribution, promotion, packaging and farming:

(1) Every person who violates, assists in violating, or fails or refuses to comply with:

(i) sections 18-22 shall be fined up to \$50,000 but not less than \$10,000 or imprisoned not more than 30 days, or both;

(ii) Section 23(a) shall be fined up to \$5,000 but not less than \$1,000, or imprisoned not more than 15 days or both;

(iii) Section 23(c) by growing tobacco shall be fined \$100 for each tobacco plant found on the said property. Tobacco plants identified shall be confiscated and destroyed immediately after the evidence has been processed.

(2) The criminal penalties imposed under this section shall be in addition to any civil penalty imposed under law, or any remedial action mandated by statutes, regulation, or court of competent jurisdiction

(3) It shall not be a defense to section 18 through 23(a) that the management official did not have knowledge of the violation or was not present on the premises at the time the violation occurred.

(4) Any product, which does not conform to the requirements of this Act

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may be seized by any person authorized to issue citations and make arrests pursuant to Section 31, and destroyed without compensation to the producer, owner, shipper

or any other person.

(c) Smoking in places of employment; in schools, sports facilities, child and adult care facilities, and healthcare facilities. Every person who violates, assists in violating, or fails or refuses to comply with any part of section 24 shall be fined up to \$1,000 but not less than \$100 or imprisoned not more than 7 days or both. Each day a place of employment is in violation will be considered a separate violation. The managing official shall be responsible for the violation irrespective of his knowledge or lack thereof, or his absence from the premises when the violation occurred.

(d) Obligation of Employers of Smoking-Restricted Places. Every person who violates, assists in violating, or fails or refuses to comply with section 25(a) through (b) shall be fined up to \$1,000 but not less than \$100 or imprisoned not more than 7 days or both. Each day a place of employment is in violation will be considered a separate violation.

(e) Smoking on airline flights. Every person who violates, assists in violating, or fails or refuses to comply with section 26(a) and (b) shall be fined up to \$1,000 but not less than \$100 or imprisoned not more than 7 days or both; and section 26 (c) shall be fined up to \$10,000 but not less than \$1,000 or imprisoned not more than 15 days or both.

(f) Threats of harm. Every person or entity that retaliates with threats of physical or economic harm against: (1) someone who is implementing or complying with provisions of this Act; or (2) someone asserting his or her right to a smoke-free environment; or (3) someone reporting any violation under this Act shall be fined up to \$5,000 but not less than \$1,000 or imprisoned not more than 15 days, or both.

(g) Failure to report contents and emissions of tobacco. Every person who violates, assists in violating, or fails or refuses to comply with Section 27(b) shall be fined up to \$5,000 but not less than \$1,000 or imprisoned not more than 15 days or both. Each

day a person fails or refuses to comply will be considered a separate violation.

(h) Illicit trade in tobacco products. A person who violates, assists in violating,

or fails or refuses to comply with Section 28 shall be fined up to \$50,000 or imprisoned not more than five years, or both. Any contraband, counterfeit or illicit tobacco product may be seized by any person authorized to issue citations and make arrests pursuant to Section 31, and destroyed without compensation to the producer, owner, shipper or any other person according to promulgated regulations and procedures.

**Section 33. License Revocation.**

(a) In addition to any court-imposed sanction, the Minister of Administration shall revoke a license issued under this Act if the licensee:

- (1) is cited two times for violations of this Act within the same fiscal year;
- (2) misrepresents a material fact in obtaining a license;
- (3) is convicted of a felony; or
- (4) fails to maintain records as required pursuant to this Act.

(b) Fees for a license shall not be refunded if a license is revoked.

**Section 34. Disposition of collected fines and fees.**

All fines and license fees collected pursuant to this Act shall be deposited in a revolving fund designated as the “Tobacco Control Act Administration and Enforcement Fund”. At the beginning of each fiscal year, the funds shall be divided accordingly to the following: 60% to the Division of Environmental Health of the Ministry of Health to implement, monitor, and enforce sections 13(c)(4), 14(a), 24, 25, 26 and 27; 15% to the Division of Customs of the Ministry of Administration to implement, monitor, and enforce sections 18 and 22; 15% to the Bureau of Public Safety of the Ministry of Justice towards Section 31(a); 5% to the Office of the Minister of Administration and 5% to the Office of the Minister of Health towards licensing related duties and responsibilities delineated in this Act. **Section 35. Amendment.** 40 PNC 1301, as amended by RPPL No. 6-37, is further amended to read as follows:

“Section 1301. Imposition of import tax.

Every person . . . . .

(1) cigarettes: \$5.00 per every 20 cigarettes; the rate shall also apply to cigarettes brought by individuals arriving in the Republic by common carrier;

(2) tobacco products other than cigarettes: 200 percent ad valorem; the rate shall also apply to tobacco products other than cigarettes brought by individuals arriving in the Republic by common carrier.

**Section 36. Manufacturing Tax.** Any tobacco product manufactured in the Republic for whatever purpose shall be subject to tax rates equal to the import tax on tobacco products as stated in 40 PNC 1301 and as amended.

**Section 37. Duty free tobacco products prohibited.** All forms of tobacco products whether imported into the Republic or manufactured in the Republic for sale or resale at a duty free retail concession or other retail outlet shall not be exempt from any applicable import tax or manufacturing tax.

**Section 38. Tobacco Control and Treatment Fund.**

There is hereby established a special revolving fund in the National Treasury of the Ministry of Administration which shall be known and designated as the “Tobacco Control and Treatment Fund”.

(a) Forty-percent of import tax collected on all tobacco products in the Republic shall be deposited in this fund. This fund shall not be commingled in any manner with other funds of the Republic. At the beginning of each fiscal year, the Tobacco Use Prevention & Control Program of the Ministry of Health shall receive money from this fund to be used for programs and services specifically for the education, prevention, and treatment of tobacco use.” Provided that not less than five-percent and no more than ten-percent can be allotted by the program to other public health programs to increase and sustain multi-departmental collaboration to achieve tobacco control-related objectives.

(b) Notwithstanding any provision of the law, the funds allotted to the Tobacco

Control and Treatment Fund shall not be subject to fiscal year limitation nor be reprogrammed for purposes other than what is set forth under this Act.

**Section 39. Effective date.** This Act shall take effect upon its approval by the President of the Republic of Palau, or upon its becoming law without such approval, except as otherwise provided by law.

Date: 4-15-05

Introduced by:                     /s/  
Senator Caleb T. Otto

                    /s/  
Senator Yukiwo P. Dengokl

                    /s/  
Senator Santy S. Asanuma

                    /s/  
Senator, Alfonso N. Diaz