

THE TOBACCO PRODUCTS CONTROL BILL, 2009

(Bill No. of 2009)

(To be presented by the Minister responsible for Health)

MEMORANDUM OF OBJECTS AND REASONS

The objects of this Bill are to provide for,

- (a) the establishment of a Tobacco Products Control Board;
- (b) the ban of smoking in public and private workplaces and enclosed places;
- (c) the regulation of the sale and distribution of tobacco products;
- (d) the ban of advertising and promotion of tobacco products;
- (e) the prohibition of the sale of tobacco and tobacco products to minors;
- (f) the prohibition of free distribution of tobacco products and the receipt of gifts or cash in contests, lotteries or games to or by the purchaser of tobacco products in consideration of such purchase;
- (g) the prescription of maximum yields of tar, nicotine, and other constituents in tobacco products and matters incidental thereto;
- (h) to protect the health of the people in the light of conclusive evidence implicating exposure to tobacco smoke in the incidence of numerous debilitating and fatal diseases; and
- (i) the promotion of alternatives to tobacco growing, production manufacture.

J. M. DLAMINI
ATTORNEY GENERAL
A BILL
entitled

An Act to give effect to the World Health Organisation's framework Convention on tobacco control and other matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

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PART I

PRELIMINARY

Short title and Commencement

1. (1) This Act may be cited as the Tobacco Products Control Act, 2009.

(2) This Act shall come into force on the date of publication in the gazette.

Interpretation

2. In this Act, unless the context otherwise requires-

“advertisement”, means any drawn, still or moving picture, sign, symbol, other visual image or message or audible message aimed at the public and designed to promote or publicize a tobacco product or to promote smoking behaviour and includes the use in any advertisement or promotion aimed at the public of a tobacco product manufacturer's company name where the name or any part of the name is used as or is included in a tobacco product trade mark, and 'advertise' has a corresponding meaning;

“appeal” means the ability of a product to provide physical or psychological pleasure, satisfaction, or other positive quality to the consumer;

“board” means the board established under section 3 of this Act

“brand element” includes the brand name, trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, recognisable colour or pattern of colours, or any other indicia of product identification identical or similar

to, or identifiable with those used for any brand of tobacco product;¹

“character” means the distinctive qualities of a tobacco product;

“composition” means the content, arrangement or combination of substances included in the processing and manufacture of tobacco products;

“constituent” means nicotine, tar and any other constituent of a tobacco product or of tobacco which the Minister may by notice in the Gazette declare to be a constituent for the purposes of this Act;

“distribute” means to sell, offer to sell, expose for sale, give, supply exchange, convey, consign, deliver, furnish, or transfer possession for commercial purposes, or offer to do so, whether for a fee or other consideration or as a sample, gift, prize, or otherwise without charge;

“emission” means any substance or combination of substances that is produced as a result of a tobacco product being lighted;

“inspector” means a person or class of persons designated as an inspector under section 34;

“manufacturer” includes any entity that is associated with the manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer;

“Minister” means the Minister responsible for Health;

“package” means the container, receptacle or wrapper in which a tobacco product is sold or displayed at retail, including a carton that contains smaller packages;

“promotion” is the practice of fostering awareness of and positive attitudes toward a product, brand or manufacturer for the purpose of selling the product or

encouraging tobacco use, through various means including direct advertisement, discounts, incentives, rebates, free distribution, promotion of brand elements through related events and products through a public or private medium of communication;

“public place” means any indoor or enclosed area which is open to the public and includes a workplace, a public conveyance, any area open or enclosed to which people are invited, expressly or impliedly;

“smoke” means to inhale, exhale, hold or otherwise have control over an ignited tobacco product, weed or plant, and 'd' and 'smoking' have corresponding meanings;

“tobacco product” means a product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves. It includes cigarette papers, tubes and filters;

“workplace”

(a) means any indoor or enclosed area in which employees perform the duties of their employment;
and

(b) includes any corridor, lobby, stairway, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment.

“toxicity” refers to the quality, relative degree or specific degree of being toxic or poisonous;

“vending machine” means any means of distribution of tobacco products that is not mediated by a human being;

“minor” means a person under the age of eighteen.

PART II

ESTABLISHMENT OF THE TOBACCO PRODUCTS CONTROL LICENSING BOARD

Establishment and composition of the Board

3. (1) There is established a Board to be called the Tobacco Products Licensing Board.

(2) The Board shall be appointed by the Minister and shall be composed of -

- (a) the Chairperson, who shall be a public officer;
- (b) two persons with expert knowledge in pharmaceuticals and drug related trade;
- (c) two persons who are not public officers from institutions or bodies responsible for control of the use of tobacco products;
- (d) a representative from the Ministry of Agriculture ;and
- (e) a representative from the Ministry of Finance.

(4) A quorum for a meeting of the board shall be four members including the Chairperson.

(5) Subject to subsection (4), the Board may regulate its own procedure.

Functions and Powers of the Board

4. (1) The functions of the Board is to regulate, supervise and monitor tobacco products in the country.

(2) For the purpose of subsection (1), the Board has power to,

- (a) determine and consider applications for manufacture, sale and distribution of tobacco products;
- (b) grant, renew or revoke licence;
- (c) authorise inspections to be conducted at such times and in such manner as it may deem necessary;
- (d) co-opt, temporarily, such persons having technical or expert knowledge of matters to be considered by the Board as the Board may consider necessary;
- (e) ensure that sums of money as may be due to the Government by the licensee are duly paid and accounted for and, for that purpose, appoint an accountant to act on behalf of the Board; and
- (f) generally, do such things as may, from time to time, be necessary for the expeditious and efficient exercise of the functions of the Board.

Vacation of office of the Board

5. (1) A member of the Board shall vacate office where the member-
- (a) becomes insolvent under any law relating to insolvency of a person in Swaziland;
 - (b) becomes of unsound mind or is in any other way physically incapacitated;
 - (c) voluntarily resigns such office;
 - (d) is convicted of an offence and sentenced to a term of imprisonment of 12 months without an option of fine.

- (e) being a member of a Board who is a public officer the member ceases to be a public officer or is transferred from the position which qualified the member for appointment to the Board.

Resignation

6. A member of the Board, other than an ex officio member, may resign from office by writing through the chairperson to the Minister and the Minister may request a member to resign from office, or remove a member from office for inability to perform the functions of office as a member or for a stated misconduct or any other just cause.

Replacement in the event of vacancy

7. Where the office of a member becomes vacant for more than twelve months, the Minister may appoint another person for the unexpired term of office of the member.

Disclosure of Interest

8. (1) A member who has an interest in a matter to be considered by the Board shall disclose the nature of that interest to the Board and is disqualified from participating in a deliberation of the Board in respect of that matter.

(2) A member who fails to disclose an interest under subsection (1) shall cease to be a member.

PART III

TOBACCO PRODUCTS REGULATION

Manufacture of tobacco products

9. (1) A person shall not manufacture, sell, or import a tobacco product except in compliance with this Act and any regulations made under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand Emalangeneni or to a term of imprisonment not exceeding four years or both.

Provision of information

10. A person who manufactures or imports a tobacco product shall provide to the Board, in the prescribed manner and within the prescribed time, information about the product content and its emissions as may be required.

Information on packages

11. A person shall not manufacture, sell, or import a tobacco product unless the package containing it displays, in the prescribed form and manner including through an enclosed leaflet with prescribed information-

- (a) the contents and emissions of the product;
- (b) the health hazards and health effects arising from the use of the product or from its emissions of the product;
- (c) advice on how to quit smoking; and
- (d) markings designed to facilitate efforts to identify illegally manufactured or distributed tobacco products or products on which tax has not been paid.

Manner of packaging

12. A person shall not package tobacco in a manner that allows a consumer or purchaser of tobacco products to be deceived or misled concerning the character, properties, toxicity, composition, merit or safety of the product.

Health warnings

13. A person shall not sell or distribute a package of tobacco products unless it is conspicuously printed on opposite sides of the tobacco product, health warnings required under section 11.

Offences and penalties

14. A person who contravenes Part 111 of this Act commits an offence and is liable on conviction –

- (a) in the case of a natural person, to a fine not exceeding of one thousand Emalangeni or to a term of imprisonment for three months or on conviction for a second or subsequent offence under this Part, a fine not exceeding five thousand Emalangeni or to a term of imprisonment for one year; and
- (b) in the case of a body corporate or an association of persons, to a fine not exceeding thirty thousand Emalangeni or, on conviction for a second or subsequent offence under this part, to a fine not exceeding fifty thousand Emalangeni.

PART IV

BANNING OF ADVERTISEMENT, PROMOTION SPONSORSHIP OF TOBACCO

Promotion through sponsorship

15. (1) A person shall not promote, a tobacco product or a tobacco product-related brand element directly or indirectly through sponsorship of an organisation, service, physical establishment or vehicle of any kind, or event.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable -

- (a) in the case of a natural person to a fine not exceeding ten thousand Emalangi or imprisonment for a term not exceeding two years; and
- (b) in the case of a body corporate to a fine not exceeding thirty thousand Emalangi.

Identical brand names

16. A person shall not sell or promote a tobacco product by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an appeal or erroneous impression about the characteristics, health effect or hazards of the tobacco product emissions.

Advertisement

17. A person shall not-

- (a) advertise or use tobacco trade marks, logos, brand names or company names used on tobacco products; or,
- (b) use tobacco trade marks, logos, brand names or company names used on tobacco products,

for the purposes of advertising any organisation, service, activity or event.

Prohibited means of advertisement.

18. (1) A person or body corporate shall not advertise tobacco products to the public through any means of radio, television, printed materials, billboards, media, public transport and internet.

(2) A person who contravenes subsection (1) commits an offence and is liable-

- (a) in the case of a natural person, to a fine not exceeding two thousand Emalangi or to a

term of imprisonment not exceeding six months; and

- (b) in the case of a body corporate or an association of persons, to a fine not exceeding thirty thousand Emalangeni.

Prohibition on promotion through non tobacco products

19. A person shall not promote or sell a tobacco product if any of the brand elements are displayed on a non tobacco product or is used with a service if the non tobacco product or service is-

- (a) associated with minors or could be construed on reasonable grounds to be appealing to minors; and
- (b) associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

Prohibition of free distribution

20. A person shall not-

- (a) offer or provide any consideration, direct or indirect, for the purpose of a tobacco product, including a gift to a purchaser or a third party, bonus, premiums, cash rebate or right to participate in a game, lottery or contest;
- (b) furnish a tobacco product without monetary consideration or in consideration of the purchase of a product or service or performance of a service;
- (c) furnish an accessory that bears a tobacco product related brand element without monetary consideration or in consideration of the purchase of a product or service or the performance of a service.

Offences and penalty

21. A person who contravenes sections 19 and 20 commits an offence and shall on conviction, be liable -

- (a) in the case of a natural person to a fine not exceeding ten thousand Emalangeni or to a term of imprisonment not exceeding two years;
- (b) in the case of a body corporate to a fine not exceeding fifty thousand Emalangeni.

PART IV

SALE AND DISTRIBUTION

Prohibition of sale and distribution to minors

22. (1) A person shall not sell or offer to sell tobacco products to any person who is under the age of eighteen years old whether for personal use or not.

(2) A person shall not be found to have contravened subsection (1) if it is established that the person attempted to verify that the person was at least eighteen years of age by asking for and being shown documentation prescribed for the purposes of verifying age, and believed on reasonable grounds that the documentation was authentic.

Tobacco product package

23. (1) A person shall not sell or distribute tobacco products except in a package that contains quantities or number of units prescribed by regulation.

(2) A person shall not sell cigarettes except in a package that contains at least twenty cigarettes or at least a prescribed number of cigarettes which number shall not be less than twenty.

Prohibition of sale in certain places

24. (1) A person shall not sell tobacco products directly on the street or store shelves or any place prescribed by regulation.

(2) Notwithstanding any regulation made under this Act, a person shall not sell or distribute tobacco products in the following places-

- (a) a health institution, including hospital, pharmacy, and health clinic;
- (b) an educational institution, including primary, secondary, and post-secondary school;
- (c) a facility with a significant portion of youth clientele, including an amusement park, movie theatre and sports stadium; and
- (d) such other places as may be prescribed by regulation.

Posting Signs

25. (1) A person shall not sell tobacco product unless it is hidden from the view of the general public and is not a single unit, including single cigarettes at point of sale.

(2) Notwithstanding subsection (1), retailers may post signs indicating that tobacco products are available for sale, the specific products or brands available for sale, and their respective prices, provided that the brand elements are not visibly displayed.

Sale by handling

26. A person shall not sell a tobacco product by means of a display or self-service that permits a person to handle the tobacco product before paying for it.

Restriction of sale through mail and devices

27. (1) A person shall not sell a tobacco product through mail, internet, television or devices that dispenses tobacco products.

(2) Notwithstanding subsection (1), tobacco products may be sold by means of a device in-

- (a) place to which the public does not reasonably have access; or
- (b) a bar, tavern or beverage room that has a prescribed security mechanism.

Places where smoking is prohibited

28. (1) A person shall not smoke tobacco or hold lighted tobacco in enclosed, indoor areas of any private or public work place, or any public place.

(2) For the purpose of this Act, private or public work places and public places include the following –

- (a) an office and office building including public area, corridor, lounge, eating area, reception area, elevator, escalator, foyer, stairway, restroom amenity area, laundry room and individual office;
- (b) factory;
- (c) health institution;
- (d) an educational institution of all levels;
- (e) any premises in which children are cared for whether for a fee or not;
- (f) any means of transportation used for commercial, public or professional purposes and used by more than one person;

- (g) a public transportation terminal;
- (h) a retail establishment including a shopping mall;
- (i) a cinema;
- (j) a concert hall;
- (k) a sports stadium;
- (l) a bar and a restaurant;
- (m) a pool and bingo hall;
- (n) a publicly owned facility rented out for events;
- (o) any other facility accessible to the public; or,
- (p) any other facilities that employ paid personnel.

Duties of the manager

29. (1) The manager or owner of specified place shall cause to be displayed in that place, clear and prominent notices in all official languages in Swaziland stating that smoking is prohibited and the prescribed penalty for that offence .

(2) Every notice under subsection (1) shall be in such form and of such size, and shall be posted in such place as may be prescribed.

(3) A manager or owner of any specified place may order any person who smokes within such place or within the immediate vicinity of the entrance to the place to cease smoking forthwith indicating the penalty for not complying and any person failing, refusing or neglecting to comply with

such order may be required by the manager or owner to leave such place without delay.

(4) A person who hinders obstructs, threatens or abuses or assaults a manager or owner of a specified place in the execution of the powers conferred by this section commits an offence and may be arrested without a warrant by such manager or by a police officer or other authorised officer.

(5) A person who commits an offence under subsection (4) shall, on conviction, be liable to a fine not exceeding five thousand Emalangeni or to imprisonment for a term not exceeding twelve months, or to both.

Designated smoking areas

30. (1) Notwithstanding the foregoing provisions of this part, the manager or owner of a specified place may provide specially designated smoking areas within such place.

(2) Specially designated smoking areas provided pursuant to this subsection shall meet the requirements of subsection (3)

- (3) A specifically designated smoking area shall be-
- (a) ventilated in such manner as to ensure that air from the area is directly exhausted to the outside and does not re-circulate or drift to other areas within the public facility;
 - (b) maintained at negative pressure as compared to adjoining non-smoking areas;
 - (c) such that non-smoking individuals do not have to enter the area for any purpose while smoking is occurring; and
 - (d) cleaned or maintained only when smoking is not occurring in the area.

(4) A person who smokes in an undesignated area of a specified area commits an offence.

Signs required

31. All private and public workplaces and public places shall post signs, in accordance with regulations, that clearly indicate that the establishment is smoke free.

PART V

INSPECTIONS

Appointment of Inspectors

32. The Board may designate, in writing, any person either by name or by office as an inspector.

Inspections

33. An inspector may, at any reasonable time, to ascertain compliance with this Act and any regulation under it, enter and inspect any of the following places-

- (a) where tobacco is manufactured, tested, stored, packaged, labelled or sold;
- (b) where anything used in the manufacture, storage, packing, labelling, promotion, sale or testing of tobacco is to be found;
- (c) where information relating to the manufacture, storage, packaging, labelling, promotion, sale or testing of tobacco is to be found.

Powers of Inspectors

34. (1) An inspector shall have the power to-

- (a) examine, open, and test any equipment, tools, materials, packages or anything the inspector reasonably believes is used or capable of being used for the manufacture, packaging, labelling, storage, distribution of tobacco products;
- (b) examine any operation or process carried out on the premises;
- (c) examine and make copies of or from any books, documents, notes, files, including electronic files, or other records the inspector reasonably believes might contain information relevant to determine compliance with regulatory requirements;
- (d) interview or question any licensee or other person involved in manufacturing, importing, exporting, transporting, packaging or distributing tobacco products, any owner of the premises, or any person using the premises, an employee, an agent, a contractor or worker, all of whom shall cooperate fully and truthfully with any inspection or investigation;
- (e) take samples of tobacco products or components of products anywhere they are found and have them tested to determine the level of harmful ingredients;
- (f) stop, search, and detain any aircraft, ship, vehicle;
- (g) or other means of transport or storage in which the inspector reasonably believes tobacco products are contained or conveyed and examine, open, take samples

of and have tested any tobacco products or product components found therein; and

- (h) seize and detain, or order the storage without removal or alteration of any tobacco product the inspector reasonably believes does not comply with regulatory requirements, upon providing the licensee or owner of the tobacco products, or if he or she is unavailable, any other person on the premises where the tobacco products are located, written notice of the seizure and detention and the grounds for it.

(2) If any tobacco product seized and detained under subsection (1) (h) is determined to meet the regulatory requirements, it shall be returned immediately to the premises from which it was seized.

(3) Any tobacco product seized and detained under sub section (1) (h) and determined not to meet regulatory requirements, may be confiscated and destroyed or be subject to other disposal, as ordered by the adjudicator of the case.

Enforcement

35. (1) The Minister may from time to time by notice in the gazette appoint any person or class of persons to be authorized officers for purposes of this Act.

(2) The Minister shall issue a certificate of appointment to every person appointed under this section.

Proof of identity

36. An inspector entering a place for purpose of inspection shall, on request, provide the operator of the place with proof of identity and produce a certificate of appointment

signed by the Minister, or by a person designated in accordance with the regulations.

Warrant

37. An inspector may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued in terms of the Regulations.

Obstruction of inspectors

38. A person shall not –

- (a) hinder in any way the performance of the duties of an inspector;
- (b) mislead an inspector by concealment or false statements;
- (c) refuse to provide an inspector with any information or document to which the inspector is entitled to under this Act, or
- (d) destroy any information or document referred to in paragraph (c).

Seizure

39. During an inspection under this Act, an inspector may seize any tobacco product or other thing by means of which or in relation to which the inspector believes on reasonable grounds that this Act has been contravened.

Offences and penalties

40. Any person who contravenes section 38 commits an offence and shall on conviction be liable to a fine-

- (a) in the case of an individual, not exceeding one thousand Emalangeni or to a term imprisonment for one year or both; and

- (b) in the case of a body corporate, not exceeding fifty thousand Emalangeni.

Regulations

41. The Minister may make regulations relating to the following-

- (a) prescribing quantities of tobacco to be sold in a single package and the level of acceptable ingredients and the procedure for mandatory disclosure of the levels of ingredients by producers, manufacturers and distributors;
- (b) prescribing the maximum yields of tar, nicotine and other constituents in tobacco products;
- (c) prescribing places where tobacco products may be sold;
- (d) prescribing required signage at point of sale;
- (e) the display of tobacco products and accessories at retail;
- (f) procedure to be followed by the inspector or analyst during an inspection;
- (g) the procedure to be followed during an inspection for seizure, as well as the one to be applied and restoration of any tobacco product;
- (h) requirements that enable the tracking and tracing of tobacco products through the distribution chain from manufacture to the point where all relevant duties and taxes have been paid including but not limited to-
 - (i) overt or covert markings to uniquely identify each individual tobacco product or any of the packaging;

- (ii) overt markings to clearly identify the legal intended end-market destination of tobacco products; and
 - (iii) scanning of tobacco products and their packaging or other procedures that identify their origin and passage through the distribution chain;
- (i) any matter necessary to be prescribed to give effect to this Act.

Tobacco control fund

42. (1) The Minister shall establish a special fund to be known as the Tobacco Control Fund.

- (2) The Fund shall consist of –
- (a) such sums of money as may be provided by Parliament;
 - (b) sums or other property received, including and not limited to fees, contribution, gift or grant from or by way of testamentary bequest by any person or persons;
 - (c) such sums as may be allocated from time to time to the Fund from loan funds;
 - (d) moneys earned or arising from any property, investments, mortgages and debentures acquired by, or vested in, the Fund;
 - (e) any property, mortgages, debentures, or investments acquired by, or vested in, the Fund;
 - (f) sums borrowed by the Fund for the purposes of meeting any of its obligations or discharging any of its functions; and

(g) all other sums or other property, which may in any manner become payable to, or vested in, the Fund.

(3) For the purposes of this section "loan funds" means such sums as may be made available from time to time by the Government by way of loan.

(4) The Fund shall be used for meeting the capital or and current expenditure relating to -

- (a) research, documentation and dissemination of information on tobacco and tobacco;
- (b) promoting national cessation and rehabilitation programs; and
- (c) any other matter incidental to (a) and (b) of this subsection.

(5) Subject to the provisions of this Part, the Fund shall be administered by the Board.

(6) The Board may, with the approval of the Minister responsible for finance, invest or place on a deposit account any of the moneys of the fund and any interest earned on moneys so invested or deposited shall be placed to the credit of the Fund.

(7) The Board shall –

- (a) impose conditions as to the use to be made of any expenditure authorized by the Board and such conditions may impose any reasonable prohibitions, restrictions or requirements concerning such use or expenditure;
- (b) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund; and

(c) transmit to the Auditor-General in respect of each financial year and within four months after the end of such financial year, a statement of account relating to the Fund.

(8) The Board shall advise the Minister on such matters as may be referred to the Board by the Minister, relating to the administration of the Fund and any other matter incidental to or relating to the functions of the Board.