

Tobacco Product (Control and Regulatory) Act, 2011

Preamble,

Whereas, it is expedient to make legal provision to reduce, control and regulate the import, production, sales and distribution and consumption of tobacco products as smoking and tobacco consumption are very injurious to human health and they also have negative impact on activity of society, economy and culture; and

Whereas, it is expedient to control such activities in order to improve the health, facility and economic interest of general public:

Now, therefore, be enacted by the Constituent Assembly, pursuant to Sub-Article (1) of Article 83 of the Interim Constitution of Nepal, 2006.

Chapter -1 Preliminary

1. **Short Title and Commencement:** (1) This Act may be called "Tobacco Product (Control and Regulation) Act, 2010.

(2) Section 9 of this Act shall come into force from the one hundred eight-first day and other clauses shall come into force from the ninety-first day of its authentication.

2. **Definitions:**

Unless the subject or context requires otherwise, in this Act:-

(a) "Tobacco products" means cigarette, quid of tobacco, cigar, pipe, sulpha and kakkad, chewing tobacco (khaini), guthkha, tobacco leaves or similar types of products prepared or manufactured for smoking or for consumption.

(b) "Smoking" means any act of consuming cigarette, quid of tobacco, cigar, pipe, sulpha, kakkad or any types of similar products.

(c) "Consumption of tobacco" means any act to be used either by smoking, sucking, snuffing or consuming khaini, guthkha, tobacco or any other products to be put into mouth or to be snuffed.

(d) "Public place" means the places prescribed in Section 3.

- (e) "Manager" means the person who has the ultimate authority to make decisions on matter of affairs in the public place and in case of public transportation and the word also includes the driver of such transportation.
- (f) "Manufacturer" means the manufacturer of tobacco.
- (g) "Inspector" means the person designated by Section 12.
- (h) "Ministry" means the Ministry of Health and Population.
- (i) "Committee" means the "Committee for Control and Regulation of Tobacco Product" formed under Section 19.
- (j) "Prescribed" or "as prescribed" means prescribed or as prescribed under this Act.

Chapter 2

Control of Tobacco Products

3. **To be deemed Public Places:** (1) The following places shall be deemed as public places:
- (a) The bodies, institutions and offices of the State and of the Government,
 - (b) Educational institutions, libraries, training and health related institutions,
 - (c) Airport, airlines and public transportations,
 - (d) Child Welfare Homes, Child Care Centers, Hermitage for old (Bridasaram), Orphanage, Children Park and club,
 - (e) Public toilets,
 - (f) Work place of industries and factories;
Explanation: For the purpose of this Section, workplace means an indoor or outdoor area in which employees perform the job at industries and factories, enterprises and plant machineries.
 - (g) Cinema hall, cultural centers and theatres.

- (h) Hotel, motel, resort, restaurant, bar, dining hall, canteen, lodge, hostel and guest houses,
- (i) Stadium, covered halls, gymnasium, swimming pool houses,
- (j) Departmental store and Mini market,
- (k) Pilgrimage and religious places,
- (l) Public bus stand and ticketing center.

(2) In addition to the public places referred to in sub-Section (1) above, other places prescribed by Government of Nepal shall also be deemed as public places having analyzed the importance and sensitivity of such places and by publishing a notification in the Nepal Gazette.

4. **Prohibition to smoke or consume tobacco in public places:** (1) No person shall be allowed to smoke or consume tobacco in public places.

(2) Notwithstanding anything contained in sub Section (1), a manager may designate any specific place as necessary in prison, airport or tourist level hotels for smoking or consumption of tobacco in a way that may not affect other persons.

(3) The other basic requirements to be maintained in the places referred to in sub-section (2) for smoking and consumption of tobacco shall be as prescribed.

5. **Display of a Public Notice:** The manager shall fix a visible or readable notice in various places, as required, of their own public place, indicating that smoking and tobacco consumption are strictly prohibited.

6. **Prohibition to smoke in private home or vehicle:** No person shall be allowed to smoke in private house or on transportation in a way that may affect other person.

Chapter 3 Production, Sales and Distribution of Tobacco

7. **Label, Trademarks, Wrappers and Packaging:** (1) The manufactures shall mention the following details on the packet or wrappers of the tobacco product;

- (a) Label and trademarks registered as per the prevailing law.

- (b) Name and address of the manufacturer and the amount of nicotine in the tobacco.
- (c) Hazardous constituents to be prescribed and other necessary information.

(2) The manufacturer shall not mention any types of logo, mark, picture or word of attraction for minors on the packet or wrappers of tobacco products.

(3) No person shall be allowed to manufacture tobacco products using the same brand name or trademark of other industry or product.

(4) No industry shall be allowed to produce any product in the shape of a cigarette, quid of tobacco (beedi) or cigar.

8. Details to be submitted: (1) The manufacture shall submit to ministry the details of the quantity of nicotine, hazardous constituents including other prescribed information about the tobacco products before sales or distribution of such products.

(2) The person who is involved in manufacturing and exporting-importing the tobacco products shall submit to the ministry an annual report of details of production and export-import of tobacco products every year.

9. Warning messages and pictures to be mentioned: (1) The manufacturers shall print and indicate clear and visible warning messages and hazards, colorful picture of harmful effect due to consumption of tobacco products covering at least seventy-five percent of packet, wrappers, packaging of parcel, label total outer side in Nepali language with details like tobacco products are injurious to health as prescribed by the ministry.

(2) The Ministry may add the warning messages, signs and marks from time to time in addition to those referred to in sub-Section (1).

(3) No importer shall be allowed to import the tobacco products which do not meet the standards referred to in sub Section (1).

10. Prohibition on Advertisement and sponsorship: (1) No person including the manufacturer shall be allowed to advertise and promote or release or sponsor any program, news or information about tobacco products through newspaper and electronic media like radio, television, FM, internet, email, interaction program, hoarding board, wall painting, logo, signage, writing, visual, audio, mark, through a person or any other media.

11. Prohibition in sale, distribution and display: (1) No person shall be allowed to sell and distribute or provide the tobacco products for free to a person below the age of 18 and to the pregnant woman.

(2) For the purpose of sub-Section (1), in case the seller wants to be sure about the age of the buyer to sell the tobacco products, the seller may ask for necessary proof to verify the age, and it shall be the obligation of the buyer to provide such evidence.

(3) No person shall be allowed to sell tobacco products within the span of 100 meter distance from educational and health institutions, child welfare homes, child care centers, elders' care home, and other public places prescribed by Government of Nepal having published a notification in the Nepal Gazette.

(4) Government of Nepal may prohibit the retail sales and distribution of cigarette, quid of tobacco (Bidi) or cigar stick or raw tobacco having published a notification in the Nepal Gazette.

(5) No person shall be allowed to gift or distribute tobacco products free of costs.

(6) Government of Nepal may, if it deems necessary, make provisions of license for sale and distribution of tobacco products.

(7) No person shall be allowed to decorate a sales point in such a manner that it may have attracted towards the tobacco products and displayed such products.

Chapter 4

Inspection, Investigation and Prosecution

12. Provisions relating to Inspector: (1) Government of Nepal may designate any officer of Government of Nepal as an inspector to inspect whether or not anyone has violated the provisions of this law and consumed tobacco or has smoked in public places and also to inspect about whether or not the manufacturers or managers have fulfilled the obligations under this Act.

(2) The Inspector shall submit an annual report of the activities carried out by him/her throughout the year.

(3) The functions, duties and powers of the Inspector shall, in addition to those referred to in this act, be as prescribed.

13. Inspection may be conducted: (1) The inspector may inspect any public places under the jurisdiction to inspect whether or not anyone has smoked or consumed tobacco in such places or whether or not a manufacturer or manager has carried out the functions to be carried out as per this act.

(2) While conducting inspection pursuant to Sub Section (1), if the Inspector finds anyone smoking or consuming tobacco in public places or a manufacturer or Manager does not adhere to the provisions of this Act, he/she may stop smoking or consumption of tobacco, or instruct or draw attention to the manufacturer or Manager to abide by the provisions of this act.

(3) It shall be the duty of the concerned manufacturer or manager to follow the instructions and attention drawn by the Inspector.

14. Manager to Inspect: (1) A manager shall have to inspect or cause to be inspected from time to time on the matters whether or not anyone has smoked or consumed tobacco in his/her related public places.

(2) While conducting inspection pursuant to sub Section (1), if it is found that anyone has smoked or consumed tobacco, he/she shall immediately stop such activities.

(3) In case a manager him/herself smokes or consumes tobacco in public places, the concerned person or an officer shall immediately stop him/her to smoke or consume tobacco, and in the case of public transportation vehicle, the passengers of such vehicle shall immediately stop the manager from smoking or consuming tobacco.

(4) In case a manager smokes or consumes tobacco at a public place, the person witnessing such event or having knowledge of thereof may complain to the inspector.

15. Investigation and Inquiry: The Inspector shall carryout necessary investigation and inquiry in relation to information received from any sources for complaint about the manager of smoking or consuming tobacco at a public place or a

manufacturer or manager has failed to adhere to the provisions mentioned in this Act.

16. Filing of cases: (1) In case it is found from investigation and inquiry carried out pursuant to Section 15 that a case has to be filed against a manufacturer or manager, the Inspector shall, within twenty five days from the date of completion of the investigation and inquiry, case file before the authority.

(2) The inspector shall, while filing cases pursuant to sub-Section (1), solicit legal opinion of the concerned Government Attorney.

Chapter -5 Punishment and Appeal

17. Punishment: (1) The manager shall impose punishment as follows on anyone who smokes or consumes tobacco in a public place in contravention of this Act:-

(a) Stop smoking or consumption of tobacco immediately and if such person does not obey or smokes or consumes tobacco products time and again, such a person shall be expelled from that place or liable to pay a fine of one hundred rupees or the both punishment may be imposed;

(b) In case the smoker or tobacco consumer is a person related to the public place or a public official, he/she shall be stop immediately to smoke or consume tobacco and if he/she repeats the activity time and again, he/she shall be taken action as if he fails to abide by the rules of discipline and he/she shall be warned or taken departmental action pursuant to the relevant service laws.

(2) If a manager smokes or consumes tobacco in public places, it shall be deemed that he/she has violated the rules of discipline and hence he/she shall be warned or taken departmental action by the authorized official.

(3) The amount received pursuant to clause (a) of sub Section (1) shall be deposited in revenue account.

(4) The decision made by the manager or authorized official pursuant to sub Section (1) or (2) shall be final.

(5) The authority hearing the case shall impose the following punishment to the concerned person in the case of the following circumstances:-

- (a) Whoever does not put the notice pursuant to Section 5 shall be liable to a punishment with a fine not exceeding five thousand rupees.
- (b) Whoever fails to comply with the provisions of Section 7, 8, and 9 shall be liable to a punishment with a fine not exceeding fifty thousand rupees and such tobacco products shall also be confiscated.
- (c) Whoever commits any act in contravention of section 10 shall be liable to with a fine not exceeding one hundred thousand rupees.
- (d) Whoever commits any act in contravention of section 11 shall be liable to a fine not exceeding ten thousand rupees.
- (e) Whoever commits any act in contravention of this act except clauses (a), (b), (c) and (d) shall be liable to a fine not exceeding five thousand rupees.

18 **Appeal:** The person who is not satisfied with the decision made by the authority pursuant to sub-Section 5 of the Section 17 may file an appeal to the concerned appellate court within thirty five days of such decision.

Chapter -6 Miscellaneous

19. **Formation of Committee:** (1) In order to formulate policies regarding control and regulation of tobacco products and other functions as well, there shall be committee formed comprising of the following members:-

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| (a) | Secretary, Ministry of Health and Population, | Chairman |
| (b) | Director, National Health, Education,
Information and Communication Centre | Vice chairman |
| (c) | One person nominated by the Ministry from
among Government health organizations
involved in the prevention and control of cancer
and diseases related to lungs and heart | Member |
| (d) | Two persons including one woman nominated
by the Ministry from among the persons involved
in non-governmental organizations which are | |

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| | established aiming to control tobacco or persons involved in private sector health organizations | Member |
| (e) | One person nominated by the Ministry from among active social workers | Member |
| (f) | Legal Officer, Ministry of Health and Population | Member Secretary |

(2) The term of office of the members nominated under sub-Section (1) shall be two years,

(3) Notwithstanding anything contained in sub-Section (2), a nominated member may be removed from such position as prescribed.

(4) The Ministry of Health and population shall carry out functions as the secretariat of the Committee.

(5) The procedures of meeting of the committee shall be as determined by the committee itself.

(6) The committee may invite experts on the concerned area in meetings of the committee as deemed necessary.

20. Functions, duties and powers of the Committee: The functions, duties and powers of the Committee shall be as follows:-

- (a) To provide suggestion, with regards to policy and law to be adopted for control and regulation of tobacco products;
- (b) To launch awareness programs about the harmful effects of smoking and tobacco in order to discourage such activities,
- (c) To adopt and cause to adopted necessary measures to help people quit smoking and tobacco consumption and support them for healthy living;
- (d) To monitor and evaluate the works and activities of Inspectors,
- (e) To coordinate with the concerned body for inclusion of educational materials in curriculum about harmful effects of tobacco products,

- (f) To conduct necessary actions for reduction of import, production, sales, distribution and consumption of tobacco products.
- (g) To arrange, make available and mobilize necessary resources for control and prevention of diseases caused by consumption of tobacco products and control of import, production, sale, distribution and consumption of tobacco products,
- (h) To direct Inspectors on matters relating to their works and activities,
- (i) To carry out and cause to carry out any act as prescribed.

21. Provision regarding disposal of the confiscated tobacco Products: (1) The authority hearing the case shall destroy the tobacco products confiscated as per this Act.

(2) While destroying the tobacco products pursuant to sub Section (1), the authority shall destroy the tobacco products in a way that may not cause adverse effect on human health and the environment.

22. Health Tax Fund: (1) Government of Nepal shall establish a Health Tax Fund for controlling smoking and tobacco products consumption and to the prevention and control of diseases caused by consumption of such products.

(2) In the fund established under sub Section (1), the fund as prescribed shall be deposited in addition to the annual fund allocated by Government of Nepal.

(3) No amount allocated pursuant to Sub Section (2) shall be less than the amount allocated in the previous year.

(4) The amount deposited in this fund under this section shall be spent as prescribed.

23. Government of Nepal to be plaintiff: Government of Nepal shall be the plaintiff in the cases under this Act.

24. **Summary Procedure to be followed:** The procedure mentioned in the Summary Procedure Act, 2028 (1971) shall be followed in the process and disposal of a case filed pursuant to this Act.
25. **Authority to Hear Cases:** The Chief District Officer shall be the authority to hear and decide the cases filed under this Act.
26. **To provide assistance:** A Manager or Inspector may request the local administration for necessary assistance to carry out any act under this Act. It shall be the duty of the local administration to provide necessary assistance upon the request made by a Manager and the Inspector.
27. **Power to frame rules:** Government of Nepal may frame necessary rules in order to implement the objectives of this Act.