

THE TOBACCO CONTROL BILL, 2008

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First Session Ninth Parliament Republic of
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SENATE

BILL

AN ACT to prevent tobacco use by young people; enhance public awareness of the hazards of tobacco use and ensure that consumers are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit or restrict promotional practices; prevent illegal conduct, including but not limited to smuggling; provide for regulation of tobacco products to mitigate against the harmful effects of tobacco; provide for sufficient regulatory flexibility to respond to new technological and scientific innovations and findings and to changes in consumer behaviours; create a national co-ordinating institution for tobacco control and provide for other related matters and purposes

THE TOBACCO CONTROL BILL, 2008

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of the Tobacco Control Bill, 2008 (“the Bill”) is to implement the requirements contained in the World Health Organization Framework Convention on Tobacco Control which Trinidad and Tobago signed on 27th August, 2003 and ratified on 19th August, 2004 and which entered into force on 27th February, 2005.

Clauses 1, 2, 3 and 4 would provide for the short title, commencement, the Act’s inconsistency with the Constitution and interpretation, respectively.

Clause 5 seeks to provide for the responsibilities of the Ministry of Health under the Bill such as the development and implementation of a national strategic approach to tobacco control.

Clause 6 would empower the Minister to appoint officers who would be authorized to carry out inspections and investigations with a view to taking enforcement action against persons suspected of having contravened any provision of the Act for which this is the Bill.

Clause 7 would require persons who manufacture, import, export or sell tobacco products to obtain a licence. Persons are prohibited from selling to or purchasing from manufacturers, importers, exporters or wholesalers who do not hold a valid licence.

Clause 8 would ban smoking in enclosed public places and clause 9 seeks to assert the rights of non-smokers over that of smokers.

Clause 10 would declare the right of all persons to be free from all forms of tobacco advertising, sponsorship or other forms of tobacco-related promotion. Clause 11 would impose limitations on the advertising or other promotion or display of tobacco products.

Clause 12 would impose a limited prohibition on tobacco sponsorships and advertising and other promotion of tobacco sponsorships.

Clause 13 seeks to prohibit other specified forms of promotion.

Clause 14 would prohibit reverse brand stretching while clause 15 seeks to prohibit incentive promotions and the free supply of tobacco products in certain specified circumstances.

Clause 16 would declare the rights of all consumers to be fully informed of the risks of tobacco use. Clause 17 would mandate that all tobacco products must be labelled and packaged in a manner that conforms with all requirements of the Act for which this is the Bill prior to being sold, offered for sale, supplied, displayed, imported or exported. Retailers are also not to acquire tobacco products that are not packaged and labelled as specified.

Clause 18 would require messages as prescribed in the Regulations to be permanently affixed onto packages of smoked products. Clause 19 would require all tobacco products to have permanently affixed on their packages or wrapper a list of specified constituents and additives.

Clause 20 would prohibit the use of false, deceptive or misleading information on tobacco product packages or labels and clause 21 would provide for the continuing duty of tobacco manufacturers or vendors to warn consumers of the dangers of tobacco use.

Clause 22 would provide for the proper affixation of health messages and constituents and additives where multiple layers of packaging are used.

Clause 23 would require tobacco product manufacturers, exporters and importers to ensure that their bulk packages contain certain information such as the tracking and tracing and tax status labelling information.

Clause 24 seeks to require product manufacturers to use tamper-proof packaging and labelling while clause 25 would require all labelling information to be in English.

Clause 26 would mandate the Minister to continuously evaluate the effectiveness of messages required under the Act for which this is the Bill and to take remedial action where necessary.

Clause 27 would address the labelling requirements for tobacco products that are to be exported.

Clause 28 seeks to state the minimum number of smoked tobacco products to be contained in a package while clause 29 would stipulate the minimum weight of a smokeless tobacco product package.

Clause 30 would ban the sale of tobacco products to minors while clause 31 would prohibit the employment of minors to sell or handle tobacco products.

Clause 32 seeks to prohibit self-service displays of tobacco products.

Clause 33 would preclude the public display of tobacco products while clause 34 would proscribe the sale of tobacco products via vending machines, the mail or the internet.

Clause 35 seeks to prohibit the sale of tobacco products in certain places, for example, health care facilities.

Clause 36 would ban the sale of imitation products such as candy cigarettes.

Clause 37 would mandate the compliance with prescribed standards prior to the manufacture, import, supply or sale of tobacco products.

Clause 38 would prohibit the making of unauthorized health claims. Clause 39 would authorize the Minister to evaluate the level of protection offered by the Act for which this is the Bill regarding tobacco product composition and design and to take any remedial measures necessary to rectify any detected disparities in the level of afforded protection.

Clause 40 would require manufacturers and importers of tobacco products to submit to the Minister prescribed reports.

Clause 41 seeks to provide for the content of reports while clause 42 would provide for the condition under which reports are to be made.

Clause 43 would prescribe the offering for sale in Trinidad and Tobago of tobacco products or brands on which the required reports have not been submitted.

Clause 44 would prescribe additional information to be submitted in reports to the Minister.

Clause 45 would state that all reports are to be accessible by the public while clause 46 would address the form and manner of reports.

Clause 47 seeks to protect employees who alert the relevant authorities of action on the part of their employers that breach this Act or other laws.

Clause 48 would list the powers which are to be vested in authorized officers.

Clause 49 would require authorized officers to present proper identification to persons being inspected or investigated.

Clause 50 would provide that the results of a concluded investigation is public information and persons who are subject to inspection or investigation may apply to the High Court for an order to protect private information.

Clause 51 would state the Court's power to subpoena witnesses and require the production of evidence.

Clause 52 would provide for the civil penalties to be applicable for contravention of specified provisions of the Act for which this is the Bill.

Clause 53 would provide for procedure in the event of administrative proceedings against an accused person while clause 54 would require persons found in contravention of the Act for which this is the Bill to pay costs for investigation and enforcement action.

Clause 55 would require the Minister to establish and carry out public awareness, education and cessation programmes to combat tobacco use while clause 56 would authorize him to make Regulations for the purposes of the Act.

Clause 57 would specify the penalty for violation of provisions of the Act for which this is the Bill for which penalties are not specifically provided.

BILL

AN ACT to prevent tobacco use by young people; enhance public awareness of the hazards of tobacco use and ensure that consumers are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit or restrict promotional practices; prevent illegal conduct, including but not limited to smuggling; provide for regulation of tobacco products to mitigate against the harmful effects of tobacco; provide for sufficient regulatory flexibility to respond to new technological and scientific innovations and findings and to changes in consumer behaviours; create a national co-ordinating institution for tobacco control and provide for other related matters and purposes

[, 2008]

Preamble

Understanding the devastating health, social, and economic effects of tobacco use and exposure to tobacco smoke on individuals and families and the costs to the government, to society, to the environment, and the socio-economic development potential of the nation:

Acknowledging the existence of vast numbers of persons addicted to tobacco use making it impractical to make tobacco products illegal:

Recognizing the right of consumers and the public to have meaningful information about the hazards from tobacco use and to be free from tobacco industry practices that undermine that information:

Recognizing Further that there is no such thing as a safe tobacco product:

Realizing that people generally begin using tobacco products without recognizing the consequences of their highly addictive character:

Realizing Further that exposure to advertising and promotional practices encourage and glamorize tobacco use, and that current widespread promotion of tobacco leads to youth initiation:

Recognizing that scientific evidence has established unequivocally that exposure to tobacco smoke in non-smokers causes death, disease and disability, and, thus, cognizant of the need and responsibility to protect individuals from the hazards of tobacco smoke:

Asserting the government's legitimate public health function and its duty to protect its population from exposure to tobacco products and their toxic smoke, regulate the manufacture, promotion, and sale of tobacco products, and to do so within a regulatory framework that provides flexibility to address advances in knowledge, technology and science as they occur, and to provide an efficient legal framework for addressing the harm caused by tobacco:

Resolving to align national laws with the WHO Framework Convention on Tobacco Control, the government undertakes the following measures to protect the health rights, and well-being of all the people, taking into account specifically the needs of, and effects of these measures on priority populations:

And whereas it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect though inconsistent with sections 4 and 5 of the Constitution:

ENACTED by the Parliament of Trinidad and Tobago as Enactment follows:—

1. This Act may be cited as the Tobacco Control Short title Act, 2008.
2. This Act shall come into operation on such day as Commencement the President may declare by Proclamation so, however, that different commencement dates may be appointed for the commencement of different provisions of this Act.
3. This Act has effect even though inconsistent with Act inconsistent with Constitution sections 4 and 5 of the Constitution.

4. In this Act—

“additive” means any substance, chemical, compound, or component, other than tobacco or water, that is introduced into a tobacco product during processing, manufacturing, or packaging, including, as applicable, those contained in the paper, filter, portion pouch, or similar part of the tobacco product, its package or accessories;

“advertisement” means any commercial communication through media or other means, that is intended to have, or is likely to have, direct, indirect or incidental effect of—

- (a) creating an awareness of a tobacco product, brand, manufacturer or seller; or
- (b) promoting the purchase or use of a tobacco product or brand,

and a tobacco advertisement includes, but is not limited to, words, names, messages, mottos, slogans, letters, numbers, pictures, images, colours, and other graphics, sounds and any other auditory, visual or sensory matter, in whole or part, that are—

- (c) commonly identified or associated with a tobacco product, brand, manufacturer or seller; or
- (d) otherwise an indication of product, brand, manufacturer, or seller identification;

“constituents”, in relation to smoked tobacco products, means the chemicals, including the particles, vapours, and gasses found in the smoke. In relation to smokeless tobacco products, constituents mean the chemicals found in the product itself;

- “distributor” or “wholesaler” means any person who buys tobacco products and re-sells them to another seller;
- “exporter” means any person who sends tobacco products outside Trinidad and Tobago for sale or supply in another country;
- “factual information” means, and is limited to, the brand name, manufacturer’s name, type of product, for example, cigarettes or smokeless tobacco, prescribed messages, constituent and additive, disclosures, price information, and any other information required or permitted in the Regulations;
- “graphic” means any symbol, sign, logo, mark, trademark, pattern, emblem, design, crèche, recognizable colours or patterns of colours, or any other indicia of tobacco product, manufacturer or seller identification;
- “health care services”, in relation to any person who has suffered or is at risk of suffering from any tobacco-related illness, means inpatient or outpatient examination, diagnosis, treatment procedures, health status monitoring, counselling, pharmaceuticals, therapies, and other health-related goods or services;
- “importer” means any person who receives or arranges for the receipt of tobacco products from another country for sale in Trinidad and Tobago;
- “manufacturer” means the corporation or other person that manufactures, fabricates, produces, processes, packages or labels tobacco products;

“media” means broadcast, print, electronic, and any other avenues of communicating to the public;

“message” or “health message” means a warning or other information about the health effects of tobacco use or exposure to tobacco smoke, the benefits of, or suggestions for quitting, any other appropriate tobacco control message, as prescribed by the Regulations;

“Minister” means the Minister responsible for health;

“ministry” means the ministry responsible for health;

“package” means any covering, wrapper, container, or other enclosure that contains a tobacco product, or multiple packages of tobacco products, that is, cartons, and includes any label and other written or graphic information on or in it;

“person” includes any individual, proprietor, firm, partnership, corporation, franchise, organization, agency, association, institution or other entity possessing a legal personality;

“place of collective use” means any place open to the public whether it is enclosed, partially enclosed, or an outdoor public space, where—

- (a) persons congregate in close proximity to one another;
- (b) smoking might pose a fire hazard; or
- (c) other criteria established in the Regulations are met,

examples of places of collective use include, but are not limited to stadiums, bus stops and similar places;

“priority population” means any population group that is, or traditionally has been, excluded from tobacco control planning, decision-making, or the benefits of tobacco control programmes or interventions; has disproportionate rates in relation to its population numbers of tobacco use or tobacco-related morbidity or mortality; or experiences a disproportionate rate of exposure to tobacco smoke or to tobacco industry promotional practices;

“promotion” includes advertising but is a broader term that includes any commercial act or practice that is intended to or is likely to encourage, directly or indirectly, the purchase or use of any tobacco product or brand or create an awareness of or association with a tobacco product, brand, manufacturer or seller;

“public conveyance” means any form or mode of transportation that carries passengers for hire or reward, whether locally, between places within the country, or internationally;

“public place” means any place, fixed or mobile, including work place, to which members of the general public or segments of the general public ordinarily have access by express or implied invitation. An enclosed public place is a partially or fully completed building or structure, including a mine or tunnel, that is separated from the outdoors;

“retailer” means a person who sells tobacco products to consumers;

“seller” means any person who supplies any tobacco product for a fee or other consideration, and includes any manufacturer, distributor, wholesaler, importer, exporter and retailer;

“smoking” means inhaling, exhaling or handling an ignited or heated tobacco product or a tobacco product producing emissions by any means;

“supply” means to sell, give, exchange, convey, consign, deliver, furnish, or transfer possession of or title to any tobacco product for the purpose of obtaining financial or business gain, or arrange or offer to do so, whether for a fee or other consideration or without charge;

“tobacco smoke” means the smoke or other emissions released from a tobacco product or the smoke exhaled by a person smoking a tobacco product;

“tobacco product” means any product containing tobacco in any form that is intended for human use and includes all parts and materials, such as papers, filters and filter wrappers, over-wrappers, rods, portion pouches, and similar matter, as applicable, even if sold separately and raw tobacco that has not been processed or prepared for human use shall not be considered a tobacco product under this Act;

“tobacco-related illness” means any illness, disease, or condition resulting in whole or in part from tobacco use or exposure to tobacco smoke, and includes any illness, disease or condition exacerbated by tobacco use or exposure to tobacco smoke;

“tobacco sponsorship” means the direct or indirect public attribution, acknowledgement, association, identification or display of a tobacco manufacturer, seller, brand or

product, or of any indicia of a tobacco manufacturer, seller, brand or product with, on, or in connection with—

- (a) an entertainment, sporting, recreational, educational, cultural, fashion, or other event, show, activity or work;
- (b) any person or team participating in such an event, show, activity or work, including their equipment, clothing and accessories;
- (c) activities in bars, nightclubs, restaurants, entertainment venues, and other similar venues;
- (d) a service provided or contribution made by a tobacco manufacturer or seller; or
- (e) a building, institution, stadium, or other public place, other than one exclusively used to manufacture or sell tobacco products;

“workplace” means any place in which persons perform duties of employment or work and includes private offices, common areas, and any other area which generally is used during the course of employment or work but shall not include private residences except to the extent that they are used for commercial purposes or are places of employment of domestic workers so, however, that an enclosed workplace is a partially or fully completed building structure, including a mine or tunnel, that is separated from the outdoors.

5. The Ministry shall be responsible for—

- (a) developing and implementing, in collaboration with national stakeholders, a national strategic approach to tobacco control;

Functions of the
Ministry

- (b) undertaking impact assessment of national policies and programmes aimed at controlling consumption and production of cigarettes and other tobacco products;
- (c) designing and disseminating messages for inclusion on tobacco packages;
- (d) reporting on Trinidad and Tobago's progress to the World Health Organization and at international conferences hosted for signatories to the Convention; and
- (e) monitoring activities nationally to ensure compliance with and enforcement of the Act and Regulations.

Appointment of authorized officers

6. The Minister may appoint any person or class of persons as officers authorized to carry out inspections and investigations as necessary or appropriate under the Act and to take enforcement actions against persons found to have violated any provision of the Act.

Licensing of sellers of tobacco products

7. (1) No person shall manufacture, import, export or sell tobacco products at wholesale without first having a licence, except however, that persons engaged in the business of manufacturing, importing, exporting or selling tobacco products on or before the coming into force of this Act shall have a period of up to six months from the date this Act comes into force to apply for a licence.

(2) A licence, once granted—

- (a) shall be prominently displayed at the establishment of the holder;
- (b) is valid for a period of three years; and
- (c) shall be subject to renewal thereafter.

(3) If the application for an initial licence or renewal is denied, the applicant shall cease manufacturing, importing, exporting or selling tobacco products, as the case may be, immediately upon notification of the application denial, subject to any right to appeal.

(4) No person shall sell any tobacco product to any manufacturer, importer, exporter, wholesaler or retailer which does not certify that it holds a valid licence, that it is exempt from licensure, or which the person knows or has reason to know does not hold a valid licence and is not exempt from licensure.

(5) No person shall purchase or take possession of any tobacco product from any manufacturer, importer, exporter, or wholesaler which does not hold a valid licence, or which the person knows or has reason to know does not hold a valid licence.

(6) The Minister with responsibility for trade shall serve as the licensing authority and may prescribe the requirements for the grant and renewal of a licence, including attaching to the grant or renewal of any licence such conditions as are reasonable or necessary for the effective and efficient administration of this Act.

(7) The Minister shall prescribe the procedure and forms for the licensure application.

(8) An application for an initial licence and any renewal shall be made to the Minister in accordance with any requirements prescribed in the Regulations.

(9) The licence fees shall be as follows:

- (a) manufacturer . . . twelve thousand dollars per annum;
- (b) wholesaler. . . . six thousand dollars per annum.

(10) The Minister may, by Order, amend the sums specified in subsection (9).

(11) A person who fails to meet the requirements for a licence on initial application or on renewal shall be denied a licence by the Minister.

(12) A licensee found to have violated any provision of this Act or Regulations made thereunder may be subject to licensure sanction, which may include limitation, suspension or revocation, at the discretion of

the Minister, consistent with the purposes of this Act and in the event of suspension, the Minister may attach such conditions for reinstatement as he deems appropriate for the efficient and effective administration of this Act.

(13) A person who contravenes this section commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of three million dollars.

(14) In this section “minister” means the minister with responsibility for trade.

Freedom from exposure to tobacco smoke

8. (1) All persons shall have the right to be free from involuntary exposure to tobacco smoke in all public places, including workplaces, places of collective use and on public conveyances.

(2) No person shall smoke or hold a lighted tobacco product in any enclosed public place, including any workplace, or in any part of an enclosed public place or workplace, including the following:

- (a) offices and office buildings;
- (b) factories;
- (c) health institutions;
- (d) educational institutions of all levels;
- (e) premises in which children are cared, for a fee;
- (f) any means of transportation used for commercial, public or professional purposes used by more than one person;
- (g) public transportation terminals;
- (h) retail establishments including bars, restaurants and shopping malls;
- (i) clubs;
- (j) cinemas;

- (k) concert halls;
- (l) sports facilities;
- (m) pool and bingo halls;
- (n) publicly owned facilities rented out for events;
- (o) facilities that employ paid personnel; and
- (p) any other facilities that are accessible to the public.

(3) Except in a place not prohibited under subsection (2), no person shall smoke within fifteen metres of any public place that provides services primarily to children or youth under the age of eighteen years or at any outdoor public places where children congregate, such as playgrounds.

(4) Nothing in this Act shall require an owner, occupier or employer to designate separately ventilated rooms for smoking.

(5) Subject to subsection (7), if any person contravenes subsection (2) in respect of a place described in subsection (2)(d), (f), (g), (h), (i), (j), (k), (l), (m), (n) and (p), each manager, owner and lessee of the place is deemed to have contravened that subsection and each is liable for the contravention.

(6) Subject to subsection (7), if a person contravenes subsection (2)(a), (b), (c), (e), and (o), the employer is deemed to have contravened that subsection and is liable for the contravention.

(7) It is a defence to a charge under subsection (3) or (4) if the manager, owner, lessee or employer, as applicable, demonstrates that he exercised reasonable care and diligence to prevent the contravention.

(8) Subsections (5) and (6) apply whether or not the person who smoked tobacco or held the lighted tobacco, or any other person, is charged with contravening subsection (2).

(9) A person who contravenes this section commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars.

(10) The Minister may, by Order, add to subsection (2).

The rights of
non-smokers
prevail

9. In interpreting the provisions of this Act, the rights of non-smoking members of the public and workers shall prevail and any question that may arise as to whether smoking is permitted in any given situation shall be resolved in favour of protecting non-smokers.

Freedom from
tobacco advertising
and promotion

10. All persons shall have the right to be free from all forms of tobacco advertising, sponsorship, and other forms of tobacco-related promotion, whether such forms are direct, indirect, overt, covert or incidental.

Limited
prohibition

11. (1) Subject to this section no person shall promote a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element of one or that evokes a tobacco product or a brand element.

(2) A person may advertise a tobacco product by information advertising or brand-preference advertising by way of—

- (a) a publication that is provided by mail and addressed to an adult smoker who is identified by name;
- (b) a publication that has an adult readership of not less than eighty-five per cent;
- (c) signs in a place where young people are not permitted by law.

(3) Subsection (2) does not apply to lifestyle advertising or advertising that could be construed on reasonable grounds to be appealing to young persons.

(2) In this section—

“brand preference advertising” means advertising that promotes a tobacco product by means of its brand characteristics;

“information advertising” means advertising that provides factual information to the consumer about—

- (a) a product and its characteristics; or
- (b) the availability or price of a product or brand of product;

“lifestyle advertising” means advertising that associates a product with, or evokes an emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

12. (1) Tobacco sponsorships, advertising and other ^{Sponsorship} promotion of tobacco sponsorships in which the name of a sponsoring entity is publicised, are prohibited.

(2) A person who engages in any activity prohibited under subsection (1) commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

13. (1) No person shall sell, display for sale, supply, ^{Other forms of} or advertise any non-tobacco product or service that ^{promotion} contains, either on the product, or in any advertisement of the product a depiction of a tobacco product.

(2) For the purposes of this section, a non-tobacco product shall include a building, facility, premises, or business that is not a building, facility or business that manufactures tobacco products exclusively.

(3) A person who contravenes subsection (1) commits an offence and is liable, on conviction on indictment, to imprisonment for one year and a fine of five hundred thousand dollars.

Prohibition
against reverse
brand stretching

14. (1) No person shall use the brand name, trademark or other sign, symbol, logo, or similar matter, in whole or in part, commonly associated with a non-tobacco product or service, on a tobacco product, except for tobacco products for which a trade or brand name of a non-tobacco product or service was in use prior to the coming into force of this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction on indictment, to imprisonment for one year and a fine of five hundred thousand dollars.

Prohibition
against incentive
promotions and
the free supply
of tobacco
products

15. (1) No person shall offer or provide any direct or indirect consideration for the purchase or use of a tobacco product, including a bonus, premium, cash rebate or right to participate in a game, lottery or contest, so, however, that nothing in this section shall prohibit the giving of any normal trade discount or normal trade rebate, or providing compensation for monitoring compliance with this Act.

(2) No person shall supply or offer to supply a tobacco product to any other person free of charge as a sample, gift, or otherwise so, however, that this subsection shall not be construed as prohibiting individuals from giving tobacco products to other individuals, so long as this is not done at the behest of, or for the benefit of, a tobacco manufacturer or seller or any person working on behalf of or in the interest of a tobacco manufacturer or seller, or for financial gain for the individual offering the tobacco product.

(3) A person who contravenes this section commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

Right to be
informed of the
risks of
tobacco use

16. (1) All consumers shall have the right to be informed fully of the health and other effects of tobacco use and the risks to others from exposure to tobacco smoke.

(2) The right to be fully informed includes the right to receive this information without interference from distracting or misleading tobacco product labelling or packaging practices.

17. (1) No person shall sell, offer for sale, supply, Conformity with display, import or export any tobacco product that is not labelled and packaged in a manner that complies with requirements all the requirements of this Act and with any Regulations made thereunder.

(2) No seller shall acquire tobacco products that are not packaged and labelled in a manner that complies with all requirements of this Act and with any Regulations made thereunder.

(3) A person who contravenes subsection (1) commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

18. (1) All tobacco products shall contain, Labelling permanently affixed on their packages or individual wrappers in the case of cigars, messages as may be prescribed.

(2) Prescribed messages shall be unattributed.

(3) No person may sell or supply any product, device, or other thing that is intended to be used, or that can be used, to cover, obscure, mask, alter, or otherwise detract from the prescribed messages on tobacco product packages and this prohibition includes design of the product package in such a way that parts of the package itself, or accessories can cover or obscure the messages.

(4) A person who contravenes this section commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

Constituents and
additives
disclosure on
tobacco product
packages

19. (1) All tobacco products shall contain, permanently affixed on their packages, or wrapper in the case of cigars, a list of the constituents and additives specified, and in a manner as may be prescribed.

(2) Constituent yield numbers shall not be displayed on tobacco product packages unless specifically authorized.

(3) A person who does not comply with this section commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

Prohibition on
deceptive or
misleading
information

20. (1) No tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely or intended, directly or indirectly, to create an erroneous impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions.

(2) This prohibition includes, but is not limited to, the use of—

- (a) words or descriptors, whether or not part of the brand name, such as “light”, “ultra light”, “mild”, “low tar”, “slim” or similar words or descriptors;
- (b) any graphics associated with, or likely or intended to be associated with, such words or descriptors; and
- (c) any product package design characteristics, associated with, or likely or intended to be associated with, such descriptors.

(3) A person who contravenes this section commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

21. Compliance with this Act in no way shall be construed as relieving any tobacco manufacturer or seller of any duty prescribed by law, custom, convention, or otherwise, to fully inform consumers of all dangers associated with tobacco use and exposure to tobacco smoke.

22. (1) If any tobacco product is placed in multiple layers of packaging, all health messages, constituents and additives disclosures shall be permanently affixed to the package in which the tobacco product ultimately is intended for consumer use, as well as to any external packaging, including cartons.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

23. (1) Tobacco product manufacturers, exporters and importers, as applicable, shall ensure their bulk packages contain the tracking and tracing and tax status labelling information required by this section.

(2) The following information shall be presented in a visible manner, and shall be permanently affixed under the cellophane or other wrapping on all the sides of each tobacco product package, including each carton, at the time of manufacture—

- (a) name and licence number of the manufacturer, as applicable, wholesaler, importer and exporter;
- (b) unique manufacturer serial number, date of manufacture and location;
- (c) name of the country in which it was manufactured; and
- (d) name of the country in which the product is intended for legal sale.

(3) A person who contravenes this section commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

Requirements for tamper-proof packaging and labelling

24. (1) Tobacco product manufacturers shall design their product packaging and labelling in such a way as to make them tamper-proof, using the best available technology.

(2) Manufacturers, importers, exporters, wholesalers and retailers shall exercise all reasonable and necessary precautions to prevent tampering with such information while the products are under their control or supervision.

(3) A person who contravenes this section commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

Language of labelling information

25. All labelling information shall be in English.

Evaluation of messages

26. (1) The Minister shall continuously determine whether the messages required under this Act and any Regulations made thereunder are providing information in an appropriate and effective manner to the general population and to priority populations.

(2) To the extent the minister determines that the mix of messages is not found to be effective in reaching the general population or priority populations, the Minister shall take remedial regulatory action as appropriate.

Labelling requirements for exported products

27. (1) Notwithstanding the provisions contained in this Act, tobacco products that will be exported from Trinidad and Tobago shall not be required to meet the labelling requirements under this Act, other than the requirements of sections 22 and 23 save that they shall be required to meet the labelling requirements of the importing country.

(2) In the absence of labelling requirements in the importing country, the labelling requirements under this Act shall apply fully to exported tobacco products and any required messages, constituent and additives disclosures, and other required labelling information shall appear in the official languages of the country of destination.

(3) A person who contravenes this section commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

28. (1) Smoked tobacco products, with the exception of cigars which may be sold as individual units so long as they are individually labelled as required, shall be contained in a package of at least twenty units.

(2) No person shall sell single cigarettes or other smoked tobacco products, or sell any smoked tobacco product other than as part of a complete and intact package that meets minimum quantity requirements.

(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of twelve thousand dollars and imprisonment for six months.

29. (1) Smokeless tobacco products shall be contained in a package of at least twenty grams.

(2) No person shall sell any portion of a smokeless tobacco product package, or sell any smokeless tobacco product other than as part of a complete and intact package that meets the minimum weight requirement.

(3) A person who contravenes this section commits an offence and is liable, on summary conviction, to a fine of twelve thousand dollars and imprisonment for six months.

Prohibition on
sales to minors

30. (1) No person shall sell any tobacco product to any person under the age of eighteen years.

(2) Prior to selling a tobacco product to any person who appears not to be at least five years older than eighteen years, it shall be necessary to take all reasonable steps to verify the age of that person, by requiring, at a minimum an identification card.

(3) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to imprisonment for five years and a fine of five hundred thousand dollars.

Prohibition on
sales by minors

31. (1) No person who sells tobacco products shall hire or use any person under eighteen years of age to sell any tobacco product or to handle any tobacco product.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to imprisonment for five years and a fine of five hundred thousand dollars.

Prohibition on
self-service
displays

32. (1) No person shall sell any tobacco product in such a way that a consumer may handle the product without the assistance of a sales clerk or other employee or agent of the seller prior to purchase.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine of one hundred thousand dollars.

Prohibition on public
displays

33. (1) No person shall display tobacco products in such a way that they are visible to the public, so, however, that the provisions of this section prohibiting public displays of tobacco products shall not apply to individuals incidentally displaying tobacco products during carrying or use.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine of one hundred thousand dollars.

34. (1) No person shall sell any tobacco product through any self-service means, including through automatic vending machines, the mail or the Internet.

Prohibition on
vending machines,
internet and
certain other sales
of tobacco products

(2) The Minister may, by Order, prohibit any other means of sale where the age of the purchaser of the tobacco product cannot be verified reliably.

(3) A person who contravenes this section commits an offence and is liable, on summary conviction, to a fine of five hundred thousand dollars.

35. (1) No person shall sell tobacco products in any of the following places:

Prohibition on
sales of tobacco
products in certain
places

- (a) facilities where health care services are provided;
- (b) sports, athletic or recreational facilities;
- (c) government buildings;
- (d) educational facilities; and
- (e) any other place prescribed by the Minister by Regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine of one hundred thousand dollars.

36. (1) No person shall manufacture, sell, display for sale, or supply any sweets, snacks, toys, or other non-tobacco items or objects in the form of tobacco products, or which imitate tobacco products.

Prohibition on
toy or candy
cigarettes

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction on indictment, to imprisonment for five years and a fine of one million dollars.

37. No person shall manufacture, import, export, supply, or sell any tobacco product unless it conforms to requirements and standards prescribed in this Act and the Regulations.

Compliance with
standards

Prohibition on health claims

38. No tobacco product package may make any claim stating, suggesting, or implying that its use or exposure to its smoke is not hazardous or is less hazardous than other tobacco products or brands, unless authorized by the Minister after he is satisfied that the claim is accurate upon a showing of scientifically competent and reliable evidence, including—

- (a) evidence demonstrating that the product will significantly reduce harm to the individual tobacco user;
- (b) evidence that the product will benefit the health of the population as a whole, taking into account the increased or decreased likelihood that current tobacco users would delay or avoid quitting or that non-tobacco users might initiate tobacco use; and
- (c) any other considerations deemed appropriate by the Minister.

Evaluation for disparate effects

39. (1) The Minister shall determine whether the provisions of the Act and Regulations affording protection against exposure to tobacco smoke, tobacco advertising, sponsorship, and other forms of promotion or regulating tobacco product composition and design result in equal levels of protection across all population groups.

(2) In the event that disparities in the level of afforded protection are found, the Minister shall take remedial regulatory action as appropriate.

Reports of constituents, additives and certain business information

40. (1) Every manufacturer and importer of tobacco products shall submit to the Minister on at least a monthly basis, unless otherwise prescribed by Regulations to be more frequent, reports containing the information required by this Act, as well as any other information the Minister may prescribe by Regulations.

(2) Such reports shall be submitted in the form and manner prescribed.

41. Reports shall identify and list, by brand, for every Information required in reports brand of smoked and smokeless tobacco product of the manufacturer and importer that is manufactured, imported into, sold, or offered for sale in Trinidad and Tobago, or exported from Trinidad and Tobago during the preceding reporting period, the following:

- (a) measures of tar, nicotine, and proportion of unbound nicotine in smoke;
- (b) the pH (acidic) level; and
- (c) filter efficiency and percentage ventilation of filters, and

all other individual constituents, additives, and of toxic constituents and additives in smoke, unless otherwise specified in the Regulations, expressed in their individual concentrations and as a ratio to nicotine, or as otherwise required in the Regulations.

42. Reports shall be made on the basis of products Product preparation and testing prepared and tested in accordance with the methods as as may be prescribed in Regulations.

43. No tobacco product or brand that has not Reports for new products previously been offered for sale or sold in Trinidad and Tobago prior to the date this Act comes into operation shall be sold or offered for sale until all required reports for that brand have been submitted.

44. In addition to any other reporting requirements, Additional information required every manufacturer, importer and exporter of tobacco products shall submit to the Minister in a prescribed manner on at least a monthly basis, unless otherwise prescribed by Regulations to be more frequent, reports containing the following information, as well as any other information the Minister may prescribe by Regulations:

- (a) the number of packages and the number of sticks, or, as applicable, the number of grams of smokeless product, of each brand of each tobacco product manufactured, imported, exported, and sold as applicable, during the reporting period, so, however,

that sales data shall be reported with respect to aggregate sales to the entire population, by brand, and with respect to sales, by brand, to distinct population groups;

(b) for exported products—

- (i) export volumes for each brand, by country of destination and by wholesaler;
- (ii) a list of the countries of final destination and a list of the countries through which the products are transported, correlated with serial number;
- (iii) the number of packages and sticks or grams, as applicable, in each shipment for export; and
- (iv) the dates on which the products, by serial number, were shipped;

(c) for imported products—

- (i) import volumes for each brand, by country of origin and by wholesaler;
- (ii) a list of the countries through which the products are transported, correlated with serial numbers;
- (iii) the number of packages and sticks or grams, as applicable, in each shipment imported; and
- (iv) the dates on which the products, by serial number, were received;

(d) prices charged for the tobacco products, by brand, along with the dates and amounts of any price increases during the reporting period;

- (e) disclosure, by date, of the amount of all contributions, loans or other payments, and the value of all gifts made to any elected or appointed government official or government entity, and to any political party during the reporting period;
- (f) copies of audited financial statements made during the reporting period;
- (g) copies of all tobacco product packaging and labelling, including any required package inserts;
- (h) a description of all marketing activities and, as applicable, copies of all marketing materials, correlated with expenditures by brand of tobacco product, and correlated with each distinct population group for which such activities, materials, and expenditures are intended; and
- (i) any other information required by the Minister by Regulations.

45. (1) Reports required under this Act and in the Disclosure of reports Regulations shall be public information.

(2) Reports shall be published in the *Gazette* and in at least one daily newspaper.

46. Reports required by this Act shall be submitted in Form and manner of reports the form and manner prescribed, and shall include all information required by this Act and Regulations made thereunder.

47. No person shall retaliate or attempt to retaliate in Protection for employees any way against an employee who notifies government authorities or who testifies in court regarding any activity on the part of his employer that violates or allegedly violates any provision of this Act or of any applicable law imposing taxes or duties.

48. (1) Authorized officers appointed under section 6 shall have the following powers:

- (a) to enter the premises of any place where tobacco is manufactured, sold, transported, received, distributed, supplied, or otherwise found or is likely to be found, or to have been present during the previous six days, so, however, that for the purposes of enforcing this Act, authorized officers may enter any public place, including workplace, and any place of collective use, to conduct inspections or investigations at any time during business or operating hours or at any other reasonable or necessary time;
- (b) to examine, open, and test any equipment, tools, materials, packages or anything the authorized officer reasonably believes is used or capable of being used for the manufacture, including packaging and labelling, storage, distribution, or advertising or promotion of tobacco products, manufacturers or sellers;
- (c) to examine any manufacturing operation or process carried out on the premises;
- (d) to examine and make copies of or from any books, documents, notes, files, including electronic files, or other records the authorized officer reasonably believes might contain information relevant to determining compliance with the provisions of this Act and the Regulations and any other applicable law, including legislation imposing duties or taxes;
- (e) to interview any person the officer believes may have information relevant to making a compliance determination;

- (f) to take samples of tobacco products or components of products, and their packaging, anywhere they are found, and have them tested;
- (g) to stop, search, and detain any aircraft, ship, vehicle or other means of transport or storage in which the authorized officer reasonably believes tobacco products are or were contained or conveyed, and examine, open, and take samples of them;
- (h) to seize and detain, or order the storage without removal or alteration of, any tobacco product or other thing the authorized officer reasonably believes does not comply with the provisions of this Act or Regulations made thereunder and any other applicable law, including legislation imposing duties or taxes; and
- (i) to take any other action reasonable or necessary for the effective and efficient administration of this Act.

(2) In acting under subsection (1)(h), the officer shall first provide the licensee or owner of the tobacco products or other things, or if he is unavailable, any other person on the premises where the tobacco products or other things, are located, with written notice of the seizure and detention and the grounds for it and if any tobacco product or other thing so seized and detained is determined to meet legal requirements, it shall be returned to the premises from which it was seized within ten working days from the date it is determined to meet legal requirements, unless it is needed as evidence in a legal proceeding and if any tobacco product or other thing is determined not to meet legal requirements, it may be confiscated and destroyed or subject to other disposal, as ordered by the Court, subject to any appeal rights that may be applicable.

(3) No person shall deny, obstruct or hinder an authorized officer in the performance of his duties.

(4) No authorized officer shall abuse or use for his own financial or personal gain, powers given to him under this section.

Identification
of authorized
officers

49. While carrying out official duties, authorized officers shall present proof of identity or proof of their appointment if requested by the person being inspected or investigated.

Inspection and
investigation
reports

50. Inspection and investigation reports, and documents collected pursuant to inspections and investigations, shall be public information once the inspection or investigation has concluded, so, however, that the person who is the subject of the inspection or investigation may apply to the High Court for an order to protect the confidentiality of any trade secrets or the privacy or confidentiality of any personal information that are contained in the records.

Subpoena power

51. The Court may require by subpoena, the attendance and testimony of witnesses and the production of any documentary or other evidence related to any matter under investigation.

Penalties

52. (1) In any action for non-compliance with any provision of this Act or any Regulations made thereunder, the following penalties may be imposed:

- (a) licensure suspension, revocation or limitation;
- (b) removal by an authorized officer of an offending person from the premises or public conveyance, and confiscation and forfeiture of any tobacco products, for smoking in violation of the provisions of this Act; and

- (c) confiscation and forfeiture, including, where appropriate destruction, using environmentally-friendly methods where feasible, of—
- (i) any item that contains a tobacco advertisement and any promotional item prohibited under this Act such as advertising, sponsorship, and other forms of promotion, regardless of the knowledge or intent of the person who owns or possesses such products;
 - (ii) any tobacco product packaged or labelled in a manner that does not conform to the requirements of this Act, including tobacco product packaging and labelling, or section, wherever they may be located and regardless of the knowledge or intent of the person who owns or possesses such products, and any equipment, machinery, materials, and related items used to evade the requirements of those sections;
 - (iii) all tobacco products owned by or under the control of the person found to have committed a violation of sections 7, 15, 28, 29, 30, 31, 32, 33, 34, 35, and 37;
 - (iv) equipment, machinery, raw materials, components, packaging and labelling materials, and any other items used to manufacture tobacco products in violation of this Act;
 - (v) all tobacco products or compo-

nents that fail to conform to the product requirements of this Act including forfeiture of any tobacco product located anywhere in the country that does not comply, regardless of the owner's intent or knowledge of its non-compliant status;

- (vi) all tobacco products for which all applicable taxes and duties have not been paid or that otherwise have not legally entered the country of destination;
- (vii) all non-tobacco products that contravene section 36; and

(d) removal from office, in accordance with applicable legislation, in addition to any other applicable penalty, and referral for criminal prosecution, of any authorized officer or other government official who uses his office or authority to undermine the effective and efficient administration of this Act for the purpose of obtaining financial or personal gain.

(2) For any continuing violation, each day the violation continues shall constitute a separate offence.

(3) Where any person derived any monetary or financial benefit directly or indirectly from any act or omission that constitutes a violation under this Act or any Regulations made thereunder or other applicable law, including any imposing duties and taxes, all proceeds so gained shall be forfeited in addition to any other penalty imposed.

(4) Where the person committing any violation is a corporate director or officer who authorized or acquiesced in the act, or who knew or, using due diligence, should have known of the commission or omission of the act constituting the violation, he shall be held liable.

(5) A corporation may be held liable as a corporate person.

(6) A person who domestically manufactures or supplies tobacco products shall be held strictly liable for any of its exported products that do not legally enter the designated country of destination or that later are found to have escaped payment of applicable taxes and duties or to otherwise be contraband goods.

53. In any action for non-compliance with any Civil proceedings provision of this Act or any Regulations made thereunder, the following shall apply:

(a) an affidavit or certification under oath by a laboratory analyst who tested any tobacco product or component; which is the subject of the proceedings shall be admissible on its mere production as *prima facie* proof of the violations shown by the examination or analysis of the tobacco product or component; so, however, that the accused shall be notified in writing in advance of the intent to produce such an affidavit or certification and may compel the analyst's presence at the hearing or to cross-examine him in advance of the hearing and offer this testimony into evidence at the hearing;

(b) copies from any record, book, or document certified by the Ministry as true and correct copies shall be deemed admissible into evidence as authentic;

- (c) where any tobacco product or component is found in any premises used for the manufacture, import, export, distribution, supply, or sale of such products, such product or component shall be presumed to be intended for manufacture, import, export, packaging, distribution, or sale, respectively;
- (d) any tobacco product from the same lot or batch shall be presumed to possess the same characteristics as those products from the same lot or batch found on the premises or at another location under the control of the owner or operator of the premises, so, however, that if there is no lot or batch number on the products, as required under the Act, any tobacco product found on the premises shall be presumed to possess the same characteristics as other tobacco products found on the premises or at another location under the control of the owner or operator of the premises; and
- (e) the person identified on the label or packaging of any tobacco product as the manufacturer, importer, exporter, distributor or seller shall be presumed to have manufactured, imported, distributed or sold the tobacco product, respectively.

Enforcement cost recovery

54. A person who violates any requirement under this Act or Regulations made thereunder, or any other applicable law, may be ordered to pay all reasonable costs associated with any investigation and enforcement action brought about by the non-compliance.

Public awareness, education and cessation programmes

55. (1) The Minister shall establish and carry out evidence-based programmes to inform the public of—

- (a) the dangers and addictiveness of tobacco use and of exposure to tobacco smoke;
- (b) the benefits of and strategies for quitting;

- (c) information on the tobacco industry and on the health, economic, and environmental effects of tobacco production and manufacturing; and
 - (d) such other information as he determines to be effective in mitigating against the health effects, social, and environmental costs of tobacco and for increasing public and consumer awareness of pertinent tobacco related issues.
- (2) The Minister shall—
- (a) make public awareness, educational, and cessation materials available to municipal corporations, health care workers and facilities, schools, the media, non-governmental organizations and such other entities as the Minister deems appropriate;
 - (b) In carrying out such programmes, develop evidence-based educational programmes and materials appropriate to the population at large and to priority populations; and
 - (c) establish and carry out evidence-based tobacco use cessation programmes, including diagnosis, counselling, and treatment services and, as appropriate, access to nicotine replacement therapies.

56. The Minister may make Regulations—

Regulations

- (a) prescribing requirements and standards for tobacco product constituents, including emissions of smoked products, additives and product design and specifying methods for testing and measuring compliance with the performance standards and requirements prescribed;
- (b) generally for carrying out the purposes and provisions of this Act.

Penalties where none
prescribed **57.** A person who contravenes a provision of this Act
for which there is no prescribed penalty commits an
offence and is liable, on summary conviction, to a fine of
five hundred thousand dollars.

Passed in the Senate this day of , 2008.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for
which has been passed by the Senate and at the final
vote thereon in the Senate has been supported by the
votes of not less than three-fifths of all the members of
the Senate, that is to say by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this
day of , 2008.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

FIRST SESSION
NINTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to prevent tobacco use by young people; enhance public awareness of the hazards of tobacco use and ensure that consumers are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit or restrict promotional practices; prevent illegal conduct, including but not limited to smuggling; provide for regulation of tobacco products to mitigate against the harmful effects of tobacco; provide for sufficient regulatory flexibility to respond to new technological and scientific innovations and findings; and to changes in consumer behaviours; create a national co-ordinating institution for tobacco control and provide for other related matters and purposes

Received and read the

First time

Second time

Third time