

TOBACCO CONTROL AMENDMENT BILL 2018

SAMOA

Explanatory Memorandum

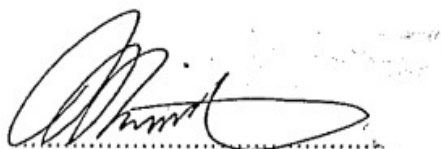
Object and Reasons:

1. The Bill seeks to amend the Tobacco Control Act 2008 (“Principal Act”).
2. The object of the Bill is to establish a tobacco licensing regime to regulate tobacco licensing fees for manufacturers, importers, distributors, nightclubs owners and hotels and to prescribe these tobacco annual licensing fees through Regulations.

Clauses:

- Clause 1: - provides for the short title and commencement date.
- Clause 2: - amends section 2 of the Principal Act by inserting new definitions and terms.
- Clause 3: - inserts new part 2A which provides for the establishment of the National Tobacco Control Committee.
- Clause 4: - repeals section 18(1)(a) of the Principal Act.
- Clause 5: - substitutes section 21(3) of the Principal Act which states that no manufacturer, distributor, importer or retailer of a tobacco product shall provide promotional discounts and internet sales of tobacco products.
- Clause 6: - inserts new section 23A which provides that a person under the age of 21 years is prohibited from selling any tobacco product.

- Clause 7:** - amends section 24 of the Act by inserting a new subsection (2A) that the Chief Executive Officer may prescribe the permitted weight and size of a cigarette in a packet that is permitted to be sold by retailers.
- Clause 8:** - inserts new section 29A which states that the Ministry may conduct testing audits of tobacco products. The intention is to carry out on the spot testing without warning to the manufacturers and importers. The testing of tobacco products is done at manufacturers and importers facilities at the cost of the manufacturer or importer.
- Clause 9:** - inserts new Part 5A which provides for a new licence scheme under the Act. The licence scheme will require manufacturers, importers and distributors of tobacco products to be licenced in order to distribute tobacco products.
- Clause 10:** - amends section 35 of the Principal Act by inserting new subsection (2) which provides for specific matters that can be prescribed by regulations.
- Clause 11:** - inserts new section 35A which provides for fees to be prescribed by Regulations.



(Hon TUITAMA Dr. Talalelei Tuitama)

MINISTER OF HEALTH

TOBACCO CONTROL AMENDMENT BILL 2018

SAMOA

Arrangement of Provisions

1. Short title and commencement
 2. Section 2 amended
 3. New Part 2A inserted
 4. Section 18 amended
 5. Section 21 amended
 6. New section 23A inserted
 7. Section 24 amended
 8. New section 29A inserted
 9. New Part 5A inserted
 10. Section 35 amended
 11. New section 35A inserted
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2018, No.

A BILL INTITULED

AN ACT to amend the Tobacco Control Act 2008 (“the Act”) and other related purposes.

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

1. Short title and commencement:

- (1) This Act may be cited as the Tobacco Control Amendment Act 2018.
- (2) This Act commences on a date nominated by the Minister.

2. Section 2 amended:

In section 2 of the Act:

- (a) for the definition of “employer” insert “and includes owners of public transport” after the word “employee”;
- (b) for the definition of “tobacco product” insert “electronic nicotine and non nicotine delivery systems and” before the word “nasal”;
- (c) for the definition of “workplace” omit “indoor or enclosed”;
- (d) insert the following new definitions in alphabetical order:

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

“distributor” means a person, company, corporate body, who engages in the business of selling tobacco products including an importer, wholesaler, distributor, supermarket, and retail store that sells or distributes tobacco in a carton;

“import” means the importation of tobacco products into Samoa in any manner, whether lawfully or unlawfully, brought into or within the territorial limits of Samoa from any country outside Samoa;

“licence” means a licence issued under this Act to either:

- (a) manufacture; or
- (b) import; or
- (c) distribute.

“licensee” means a holder of a licence issued under this Act;

“National Tobacco Control Committee” means the National Tobacco Control Committee established under Part 2A;

“prescribed fee” means a fee to be prescribed pursuant to section 35A;

“occupier” means a person who has responsibility for and control over the condition of premises or the activities in such premises, or control over persons allowed to enter the premises, despite the fact that there is more than one occupier of the same premises;

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

3. New Part 2A inserted:

After section 7 of the Act, insert the following new Part:

**“PART 2A
NATIONAL TOBACCO CONTROL COMMITTEE**

7A. National Tobacco Control Committee:

- (1) The National Tobacco Control Committee is established.
- (2) The members are:
 - (a) a representative of the Ministry of Health who shall be the Chairperson and Secretary; and
 - (b) a representative of the Ministry of Finance; and
 - (c) a representative of the Ministry of Commerce, Industry and Labour; and
 - (d) a representative of the Ministry of Agriculture and Forestry; and
 - (e) a representative of the Ministry of Education, Sports and Culture; and
 - (f) a representative of the Ministry of Women, Community and Social Development; and
 - (g) a representative of the Ministry for Revenue; and
 - (h) a representative of the Ministry of Foreign Affairs and Trade; and
 - (i) a representative of the Samoa Police Service; and
 - (j) a representative of the Land Transport Authority; and
 - (k) a representative of the Samoa Family Health Association; and
 - (l) a representative of the National Council of Churches; and
 - (m) a representative of the Samoa Association of Sports and National Olympic Committee; and
 - (n) a representative of the Samoa Cancer Society; and
 - (o) a representative of the Samoa National Youth Council.

7B. Functions of the National Tobacco Control Committee:

The functions of the National Tobacco Control Committee is:

- (a) to develop a Multi-sectoral Workplan to assist the implementation of the Tobacco Control Act 2008, international obligations to the Framework Convention of Tobacco Control (FCTC) and the Protocol to Eliminate

Illicit Trade in Tobacco Products and any other related Tobacco laws;

- (b) to be an advisory committee to lead communication and advocacy within their organisation or ministry about the importance of tobacco control;
- (c) support the coordination of input from their agency on tobacco control activities as appropriate;
- (d) to liaise within their agency as appropriate to strengthen the effective implementation of tobacco control laws; and
- (e) support advocacy, strategies to promote tobacco control activities.

7C. Meetings of the National Tobacco Control Committee (“Committee”):

- (1) The Committee shall meet four times every calendar year to discuss updates and address any issues that arise and put in strategies to improve reported situations.
- (2) The quorum for a meeting is eight (8) members of the Committee.
- (3) The Committee must provide a quarterly report to the Minister of Health through the Chief Executive Officer of the Ministry of Health.”.

4. Section 18 amended:

Section 18(1)(a) of the Act is repealed.

5. Section 21 amended:

For section 21(3) of the Act substitute:

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

6. New section 23A inserted:

After section 23 of the Act, insert:

“23A. Sale of tobacco products by persons under 21 prohibited:

- (1) A person below the age of 21 must not sell any tobacco product.
- (2) A person who breaches subsection (1) commits an offence and is liable upon conviction to pay a fine not exceeding 1,000 penalty units.

7. Section 24 amended:

Section 24 of the Act is amended by inserting after subsection (2):

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

8. New Section 29A inserted:

After section 29 of the Act, insert:

“29A. Shadow testing:

The Ministry may conduct testing audits of tobacco products at manufacturers and importers facilities at the cost of the manufacturer and importer.”.

9. New Part 5A inserted:

After section 31 of the Act, insert the following new Part:

**“PART 5A
LICENCES**

31A. Licence:

- (1) A person must manufacture, import or distribute tobacco products in accordance with a licence issued under this Part.
- (2) A person who breaches subsection (1) commits an offence and is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both.

31B. Classes of licence:

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

- (a) manufacture licence;
- (b) importer licence; and
- (c) distributor licence.

31C. Manufacturer licence:

A manufacture licence authorises the licensee to manufacture tobacco products on conditions set out in the licence.

31D. Importer licence:

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

31E. Distributor licence:

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

31F. Application for a licence under this Part:

- (1) An application for the issue of a manufacture licence, import licence or a distributor licence must be in the prescribed form and be accompanied by the prescribed fee.
- (2) The Chief Executive Officer must not consider an application for the issue of a licence if the prescribed fee required under subsection (1) has not been paid.
- (3) Regulations may be made pursuant to section 35 to prescribe the manner in which an application is to be made under this section.
- (4) If information provided by an applicant under this section is false, misleading, defective in any particular, or if any document provided by the applicant under this section is not genuine, false or misleading:
 - (a) the applicant commits an offence and is liable upon conviction to a fine not exceeding 20 penalty units; and
 - (b) if the applicant has been issued a licence, the licence is automatically cancelled.

31G. Chief Executive Officer when considering licence application:

- (1) Upon receipt of an application under section 31E, the Chief Executive Officer shall consider the application and within a reasonable time, either:
 - (a) issue a licence; or

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

31H. Suspension of licence:

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

31I. Cancellation of licence:

- (1) The Chief Executive Officer may cancel a licence if it is within the best interest of the public to do so.
- (2) Without limiting subsection (1), in determining whether it is in the public interest to cancel a licence, the Chief Executive Officer, must consider whether:

- (a) the licensee has contravened a provision of this Act; or
 - (b) the licensee has contravened a condition of the licence; or
 - (c) the licensee has been convicted of an offence under this Act; or
 - (d) the circumstances of that contravention are such that the licence should be cancelled.
- (3) Before cancelling the licence under subsection (1), the licensee must be given a reasonable opportunity to be heard and the Chief Executive Officer must provide the licensee with the reasons for which his or her licence is to be cancelled.

31J. Duration and renewal of licence:

- (1) A licence which is granted to a licensee will be valid for a period of one (1) year from the date of its grant.
- (2) An application for the renewal of a licence under this Part must be made in the approved form and accompanied by the prescribed fee at least one (1) month prior to its expiration.

31K. Transfer of licence:

- (1) A licensee must not transfer a licence issued under this Part except with the prior written approval of the Chief Executive Officer.
- (2) A licensee seeking approval of the Chief Executive Officer under this section must make application in the approved form and pay the prescribed fee.

31L. Licences to be displayed:

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

10. Section 35 amended:

In section 35 of the Act insert:

- (a) “(1)” before the word “The”; and
- (b) insert the following new subsection (2):

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

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

11. New section 35A inserted:

After section 35 insert:

“35A. Fees:

- (1) For the purpose of this Act, fees are to be prescribed by Regulations made by the Head of State.
 - (2) The fees are proposed by the Ministry and are subject to consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.”.
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