

CHAPTER 121

THE TOBACCO PRODUCTS (REGULATION) ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 121

THE TOBACCO PRODUCTS (REGULATION) ACT

An Act to regulate the manufacture, labelling, distribution, sale, use, promotion of tobacco products, smoking in specified areas and matters connected thereto.

[1st July 2003]

[GN. No. 159 of 2003]

Act No.
2 of 2003

PART I

PRELIMINARY PROVISIONS

- Short title 1. This Act may be cited as the Tobacco Products (Regulation) Act.
- Interpretation 2. In this Act, unless the context otherwise requires-
“Act” means the Tobacco Products (Regulation) Act;
“analyst” means a person designated as such by the Minister pursuant to this Act;
“accessory” means a product that may be used in the consumption of a tobacco product, including a pipe, cigarette holder, cigarclip, ashtray, carrier bag, lighter and matches;
“advertisement” means a writing or any still or moving picture, sign, symbol or other visual image or message or audible message, or a combination of two or more of them, that gives publicity to, or otherwise promotes or is intended to promote tobacco, tobacco product or tobacco related brand element;
“brand element” includes a brand name, trademark, trade name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, moto, selling message, recognisable colour or patent of colours or any other indicia of product

identification, identical or similar to, or identifiable with those used for any brand or tobacco is produced as a result of a tobacco product being lighted;

“Committee” means the Tobacco Products (Regulation) Committee established under section 31;

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

“employee” includes a person whose services are contracted for by an employer;

“employer” means a person who employs one or more employees or who contracts for the service of one or more persons;

“enclosed workplace” means an enclosed building or structure in which an employee works;

“entity” includes an individual, corporation, firm, partnership, association, society, trust or other organisation whether incorporated or not;

“furnish” means to sell, lend, assign, give or send with or without consideration:

“inspector” means a person appointed as an inspector under section 18;

“manufacture” includes the packing, labelling, processing, distribution and importation of tobacco products;

“manufacturer” means any person or entity who manufactures or is associated with the manufacture of tobacco products, including the packaging; “labelling, processing, distribution and importation of tobacco products, includes an entity which controls the manufacture;

“Minister” means the Minister responsible for health;

“package” means a container, receptacle or wrapper in which a tobacco product is sold;

“promotion” means the practice of fostering awareness of and positive attitudes towards a product, brand or manufacturer for the purpose of selling the product or encouraging tobacco use, through various means including direct advertisement, discount, incentives, rebates, free distribution, promotion of brand elements through related events and products through a public medium of communication; and

“tobacco product” means tobacco leaves, extract of tobacco, leaves, cigarettes, cigars, cigarirus, hand rolling tobacco and includes other smoking tobacco products such as, pipe tobacco, fine tobacco and any chewing tobacco which is manufactured whole or partly from tobacco or any substance used as a substitute of tobacco.

PART II

POLICY OBJECTIVE

Policy objective

3. The objective of this Act is to reduce tobacco use and its consequent harm by-

- (a) protecting persons under eighteen years and other nonsmokers from inducements to use tobacco products;
- (b) protecting nonsmokers from exposure to tobacco smoke;
- (c) ensuring that the population is adequately informed about the risk of using tobacco products and exposure to second hand tobacco smoke and about the benefits available for quitting smoking;
- (d) ensuring that tobacco products are modified to reduce harm to such an extent as may be technologically and practically possible; and
- (e) promoting a climate that will lead to a smoking-free atmosphere in all walks of life.

PART III

MANUFACTURE, IMPORTATION, ACCESS TO AND SALE OF TOBACCO PRODUCTS

- Standard of tobacco products
Cap. 130
4. A person shall not manufacture or import a tobacco product that does not conform with the standards prescribed by the Tanzania Bureau of Standards established by the Standards Act.
- Information required from manufacturer
5. A manufacturer of a tobacco product shall provide to the Minister information about the product and its emissions in the manner and within the prescribed time.
- Labeling
6. A person shall not sell tobacco products unless the packet containing it displays in the prescribed form and manner such information as stipulated in the First Schedule to this Act.
- Prohibition of certain conducts relating to tobacco products
- 7.-(1) A person under the age of eighteen shall not smoke or furnish a tobacco product.
- (2) A person shall not furnish a tobacco product to any person under the age of eighteen years in any place.
- (3) It shall be a defence to a person charged pursuant to subsection (2) to establish that he attempted to verify that the person was at least above the age of eighteen by asking and being shown evidence and that he believed on reasonable ground that the evidence was authentic.
- (4) The provisions of subsections (1) and (2) in relation to furnishing of tobacco products shall not apply to any person under the age of eighteen who is working or associated to the family farm, estate or shop.
- Posting signs by retailer seller
- 8.-(1) A seller of tobacco products shall post in a conspicuous place signs in the prescribed form and content, as may be specified by the Minister being in Kiswahili and English that inform the public that the sale or giving of a tobacco product to a person under the age of eighteen is prohibited, unless the seller is exempted by the regulations made under this Act from the requirement to post the signs.

(2) A person who contravenes the provision of subsection (1), commits an offence.

Self service
dispensing
machine

9. A person shall not, unless exempted by regulations made under this Act, sell a tobacco product by means of a device that dispenses tobacco products.

Mailing of
tobacco products

10. A person shall not cause a tobacco product to be sent by mail unless the mailing is between manufacturers, retailers or distributors who are exempted by the regulations made under this Act.

Restricted places
of sale

11.—(1) A person shall not sale tobacco products-

- (a) within the grounds or within the premises of a school providing primary or secondary education;
- (b) within the grounds or within a health care establishment or a social services institution;
- (c) within the grounds or within a child care centre; and
- (d) in public places and other places specifically set aside for persons under eighteen years.

(2) The provision of paragraph (b) related to social services institutions shall not apply to membership clubs and clubs performing social functions or activities.

PART IV

RESTRICTION ON THE USE OF TOBACCO PRODUCTS IN CERTAIN PLACES

Prohibition of
smoking in public
places

12.—(1) Subject to sections 11 and 14, a person shall not smoke in a public place.

(2) For the purposes of this Part, the term “public place” means a health care establishment, library, place of worship, enclosed premises intended for socio-cultural meetings, sporting or recreational activities, public eating places, office buildings, public transport on air, land or sea, pavillion,

enclosed environment such as markets, malls and any other enclosed place to which the public has admittance.

(3) A person who owns, occupies or operates any public place specified under subsection (2), shall set aside a room or area specifically for smoking.

Smoking allowed
in certain areas in
public places

13.-(1) A person being in charge of higher educational establishment, an office building, a hotel, bar or a restaurant, and any other entertainment facility, shall set aside rooms for smoking and non-smoking.

(2) A room set aside for smoking shall be equipped with ventilation system which allows smoke to be evacuated to the outside of the building.

Smoking allowed
in certain entities

14.-(1) The owner, occupier or operator of a public place or business shall-

- (a) identify rooms or areas where smoking is permitted;
- (b) when setting aside rooms or areas for smoking he shall ensure maximum protection is provided to non-smokers;
- (c) post a visible notice to persons using the place or business showing areas or places where smoking is permitted and areas or places where smoking is prohibited; and
- (d) put up in a conspicuous place legible “NO SMOKING” and “HAIRUHUSIWI KUVUTA SIGARA” signs where smoking is prohibited.

(2) An employer may designate one or more locations in an enclosed workplace as a smoking area.

Consultations

15. An employer or owner of a public place or business shall consult with the Committee before establishing a designated smoking area.

Obligation of
employer

16. An employer shall make every reasonable effort to ensure that no person smokes in an enclosed workplace.

Restriction on promotion of tobacco products in certain situation

17.—(1) A person or entity shall not conduct any promotional activities within-

- (a) a health and social services institution;
- (b) an association representing health and social services institutions;
- (c) a research entity or research centre linked to a health and social services institution;
- (d) educational establishment; and
- (e) place of worship.

(2) A person or entity shall not use a person under the age of eighteen in any promotional activity or event sponsored by tobacco industry.

(3) A person or entity shall not advertise any tobacco products unless the advertisement contains the health messages stipulated under the First Schedule to this Act.

(4) A person who in the course of his business offers to a person under the age of eighteen free tobacco, tobacco products or tobacco related brand element for purposes of promoting the product, commits an offence.

PART V

INSPECTION, ANALYSIS AND ENFORCEMENT

Appointment or designation of inspectors or analysts

18.—(1) The Minister may appoint by notice published in the *Gazette* any public officer or designate any body as an inspector or analyst for the purposes of this Act and shall provide the inspector and analyst with a certificate of appointment or designation.

(2) An inspector or an analyst entering an enclosed workplace or any other place, shall, on request, show the certificate referred to in subsection (1) to the person in charge of the place.

Powers of
inspector

19.-(1) A person appointed to be an inspector may at any reasonable time, enter an enclosed workplace or any other place in which the inspector believes on reasonable grounds that-

(a) tobacco product is manufactured, stored, labelled or sold; or

(b) there is information relating to the manufacturing, storage, packing, labelling or sale of tobacco product;

(2) In carrying out inspection, an inspector may-

(a) require any person in the place to produce for inspection, in the manner and form requested by the inspector, the tobacco product;

(b) open or require any person in the place to open any package found in the place that the inspector believes on reasonable grounds contains the tobacco product;

(c) require any person found in the place to produce for inspection or copying any information that is relevant to the administration or enforcement of this Act; and

(d) seize forthwith anything believed on reasonable grounds to have been used or to have given rise to an offence under this Act.

(3) Subsection (1) shall only apply to a dwelling house if subsection (2) of section 23 is complied with.

Orders by
inspector

20.-(1) Where an inspector finds that an employer is not complying with sections 11, 12, 15 or 16, the inspector may order the employer or an occupier of a public place or of an entity to carry out the order forthwith or within a period of time as the inspector may specify.

(2) An order made under subsection (1) shall indicate generally the nature, and when appropriate, the location of the non-compliance.

Appeals

21. A person who is aggrieved by an order made by an inspector may appeal to the Minister within thirty days from the date of such order.

Powers of analyst **22.**—(1) Where any institution or body has been designated to be analyst, such institution or body may, at any reasonable time, enter any place-

- (a) where tobacco product is stored, packed, labelled, tested or sold;
- (b) where anything used in the manufacture or testing of tobacco product is to be found; and
- (c) where information relating to the manufacture, storage, packing, labelling, testing or sale of tobacco product is to be found, and may-
 - (i) examine a tobacco product or thing found under paragraph (b);
 - (ii) take or require any person in the place to produce a sample of the tobacco product; and
 - (iii) conduct any test or analysis.

(2) An analyst may issue a certificate or report setting out the results of the analysis or examination of tobacco product or thing done under this Act.

(3) For the purposes of section 18 and this section, the Tanzania Bureau of Standards is designated to be an analyst and shall possess all powers and perform the functions and exercise the powers necessary for the discharge of duties conferred to an analyst under those sections.

Entry of dwelling place **23.**—(1) Where an inspector suspects or has reasons to suspect that tobacco product is being used in any dwelling place in contravention of provisions of this Act, he may enter into such dwelling place and conduct search with a view to remove any of such product.

(2) Notwithstanding the provision of subsection (1), an inspector shall not enter a dwelling place except with the consent of the occupant or under the authority of a search warrant obtained from the court.

(3) An inspector executing the search warrant shall not use force unless the use of force is specifically authorised in that warrant.

False or misleading statements to inspector or analyst

24.—(1) A person shall not obstruct or hinder, or knowingly make a false or misleading statement to, an inspector or an analyst carrying out duties under this Act.

(2) A person who contravenes the provision of subsection (1), commits an offence and on conviction shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

Forfeiture and disposal

25. Where a person has been convicted of an offence under this Act, any tobacco product or thing seized in respect of which the offence was committed, shall be forfeited to the Government and may be disposed of as the Minister directs.

PART VI

ADVERTISEMENT AND PROMOTION

Prohibition of promotion and advertisement

26. A person shall not-

- (a) promote a tobacco product or a tobacco product related brand element in any manner except as authorised by this Act;
- (b) promote a tobacco product by means of a testimonial for, or an endorsement of, the tobacco product however displayed or communicated;
- (c) promote an accessory that displays a tobacco product related brand element;
- (d) promote a tobacco product if any of its brand element is displayed on a non-tobacco product or is used with a service, if the non-tobacco product or service is associated with persons below the age of eighteen or can, on reasonable grounds be capable of appealing to persons under the age of eighteen;
- (e) promote any tobacco product by means of publication or any other communication that originate outside Tanzania;

- (f) disseminate by means of publication, broadcast or any other communication that originates outside Tanzania, a promotional material that contains a tobacco product or a tobacco product related brand element in a way that is contrary to the provisions of this Part;
- (g) supply or distribute a tobacco product free of charge or for promotional purposes of any kind except as provided under this Act;
- (h) offer samples to persons under the age of eighteen or to a non-smoker;
- (i) make direct or indirect payment or make contribution intended for placement of advertisement of items bearing tobacco brand name or tobacco brand element within the body of any-
 - (i) motion picture;
 - (ii) television program;
 - (iii) theatrical production or other live performance;
 - (iv) live or recorded performance of music;
 - (v) commercial film or video;
 - (vi) video game; or
 - (vii) any similar median, which is intended for the general public; or
- (j) place an advertisement which suggest-
 - (i) sporting or athletic success;
 - (ii) professional success;
 - (iii) sexual success;
 - (iv) that most of the people are smokers;
 - (v) smoking brings success in life generally; or
 - (vi) anything of the above or contradicts the purposes of this Act.

False promotion

27. A person shall not promote a tobacco product by any means including packaging that is likely to create an erroneous impression about the characteristics, or health hazards of the tobacco product or its emissions.

Sponsorship

28.—(1) Any direct or indirect sponsorship that is associated in any manner with the promotion of a tobacco product, a brand of tobacco product or a manufacture of tobacco products is prohibited in relation to persons below the age of eighteen.

(2) A person below the age of eighteen shall not be authorised to bear tobacco product advertisements, logos or brand names in any sports or any sponsored events or activities.

(3) A person shall not offer any item, cloth or anything offered for sale or free by or on behalf of any participant in any sports promotional event to persons below the age of eighteen.

(4) Notwithstanding the provisions of this section, donations for good cause with no promotional interest both to the donor and to the donee may be made in relation to the following:

- (a) a health and social services institution;
- (b) an association representing health and social services institution;
- (c) a research entity or research center linked to a health and social services institution;
- (d) education establishment;
- (e) a religious organisation; or
- (f) any other institution or organisation.

Seller of tobacco product

29. A seller of tobacco product may-

- (a) display a tobacco product;
- (b) display an accessory that displays a tobacco product related brand element; and
- (c) post signs that indicate the availability of tobacco product and its price.

Promotion information to be sent to Minister

30. A manufacturer of tobacco product shall provide to the Minister, in the prescribed manner and within the prescribed time, the information about any promotion undertaking that is about to be done or which was done and to which certain information have been requested for by the Minister.

PART VII ADMINISTRATION

Tobacco Products
(Regulation)
Committee

31.—(1) There is hereby established a Tobacco Products (Regulation) Committee which shall—

- (a) advise the Minister on any matter that requires regulations to be prescribed for under this Act;
- (b) prepare and submit to the Minister guidelines for the regular and progressive implementation of matters relating to the manufacturing, sale, advertisements, promotions and sponsorship of tobacco products; and
- (c) advise the Minister on such other matters in connection with the administration of this Act as may be referred to the Committee by the Minister.

(2) The provisions of the Second Schedule to this Act shall have effect as to the composition and functions of the Committee.

(3) Where, in accordance with this Act, a matter is required to be referred to the Committee for advice, the advice submitted to the Minister shall be in a written form, and in the event that the Minister dispose of the matter otherwise than in accordance with the advice of the Committee, the Minister shall, before disposing of the matter give reasons and furnish a report to the Committee to that effect.

(4) The Minister shall include in a report to be published annually on the work of the Ministry a statement on the matters which have been referred to the Committee.

Regulations

32.—(1) The Minister may, make regulations after consultation with the National Construction Council determining standards concerning—

- (a) the construction and ventilation system in rooms or areas where smoking is permitted; and
- (b) the notice referred to in section 14(1)(c).

- (2) The Minister may make regulations-
- (a) prescribing signs that require to be posted under section 8;
 - (b) determining cases, conditions and circumstances in which places where smoking is permitted even if prohibited under sections 11 and 12;
 - (c) prescribing signs and providing for their uses;
 - (d) prescribing the powers and duties of inspectors;
 - (e) prescribing the taking of samples;
 - (f) prescribing the use of tobacco product related brand elements;
 - (g) prescribing the manner in which warning in a tobacco product related brand element may appear on an accessory; and
 - (h) prescribing the display of tobacco products and accessories at retail and wholesale.
- (3) Without prejudice to the generality of subsections (1) and (2), prior to the coming into operation of such regulations, the Minister shall issue notice and provide sufficient time for compliance.

PART VIII

OFFENCES AND PENALTIES

Offences against
Part III and IV

33.—(1) A person who contravenes the provisions of section 4, 5, or 6 commits an offence and on conviction, shall be liable to a fine of not less than five million shillings but not exceeding twenty million shillings or to imprisonment for a term not exceeding three years or to both.

(2) A person who contravenes the provisions of Part III of this Act, commits an offence and on conviction, shall be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years.

(3) A person who contravenes the provisions of Part IV of this Act, commits an offence and on conviction shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year.

Subsequent offences

34. A person who commits or continues an offence under this Act on more than one day shall be liable to be convicted for a separate offence for each day on which the offence is committed or continues.

Offences by entity

35. Where an entity commits an offence under this Act, any director or officer of the entity who authorised that action or omission shall be liable on conviction to the penalty provided for under this Act.

Additional penalty

36. Where a person commits an offence under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

- (a) prohibiting the offender from engaging in any activity that is likely to result in the continuation or repetition of the offence; or
- (b) prohibiting the offender from selling or manufacturing tobacco or tobacco products for a period of not more than one year in the case of a subsequent offence under this Act.

General penalty

37. A person who contravenes the provisions of this Act commits an offence and on conviction, shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

FIRST SCHEDULE

(Made under section 6)

HEALTH MESSAGES TO BE DISPLAYED ON CIGARETTES OR TOBACCO PRODUCT PACKAGES

1. Any of the following health messages shall be displayed in Kiswahili and English on every packet of cigarettes or tobacco product, sign or advertisement for smoke and smokeless products as the case may be, as provided hereunder-

- (a) smoking harms people next to you;
- (b) cigarette smoking kills;
- (c) tobacco use kills;
- (d) cigarette smoking may cause cancer;
- (e) tobacco use may cause cancer;
- (f) cigarette smoking causes lung disease;
- (g) tobacco use causes lung disease;
- (h) cigarette smoking is dangerous to your health;
- (i) tobacco seriously damages health; and
- (j) smoking causes heart and fatal diseases.

2. The Minister may, after consultation with the Tobacco Products (Regulation) Committee, vary or change the format, type, size and text of any of the health messages.

SECOND SCHEDULE

(Made under section 31(2))

COMPOSITION AND FUNCTIONS OF THE TOBACCO PRODUCTS (REGULATION) COMMITTEE

Composition of
Committee

1.-(1) The Committee shall consist of-

- (a) the Director of Preventive Services or his representative;
- (b) the Head of the Health Education Unit or his representative;
- (c) a legally qualified person nominated by the Attorney General;
- (d) a representative of the Ministry of Industries and Trade;
- (e) a representative of the Ministry of Finance and Planning;
- (f) a representative of the Tanzania Bureau of Standards;
- (g) a representative of the Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA);
- (h) a representative of the Department responsible for information;
- (i) a representative of the Ministry responsible for agriculture and food security; and

(j) a representative from the private sector who is conversant and active in tobacco regulation matters appointed by the Minister.

(2) The Minister shall appoint one of the members of the Committee to be the Chairman.

(3) In the absence of the Chairman, the members shall elect one of the members to be the Vice Chairman.

(4) The term of office for the Committee shall be four years, but the members may be eligible for reappointment.

Meeting and
Quorum

2.-(1) The Committee shall meet four times in a year to carry out its functions at such times and places as the Chairman or in his absence, the Vice Chairman, directs.

(2) At a meeting of the Committee-

- (a) the Chairman, or in his absence the Vice Chairman and five other members shall form a quorum;
 - (b) all matters arising shall be decided by a majority of votes; and
 - (c) the Chairman, or in his absence, the Vice Chairman, shall have a deliberative vote, and, in the event of an equality of votes, a casting vote.
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