



BERMUDA

TOBACCO CONTROL ACT 2015

2015 : 56

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SCHEDULE 1
No smoking areas

SCHEDULE 2
Health Warnings

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Warning notices

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WHEREAS it is necessary to create updated provisions to protect minors and others from inducements to use tobacco products; to protect the health of minors by restricting access to cigarette products and tobacco products; to control the sale and use of electronic cigarettes; to repeal the Tobacco Products (Public Health) Act 1987; and to revoke the Tobacco Products (Public Health) Regulations 1988;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1 PRELIMINARY

Citation

1 This Act may be cited as the Tobacco Control Act 2015.

Interpretation

2 In this Act—

“brand” includes a brand name, trademark, trade-name, distinguishing guise, logo, graphic arrangement, design that is reasonably associated with a product or a brand of a product;

“cigarette” means a cylindrical roll of ground or shredded tobacco that is wrapped in paper or another substance meant for smoking;

“cigarette product” includes cigarettes and electronic cigarettes;

“electronic cigarette” means a cigarette-shaped device containing a nicotine based liquid that is vapourised and inhaled, and is used to simulate the experience of smoking tobacco;

“employee” has the meaning given in the Employment Act 2000;

“employer” has the meaning given in the Employment Act 2000;

“enclosed public place” means the inside of a place, building or structure, temporary or permanent, that is covered by a roof completely or more than fifty percent closed to the outside air, and to which the public is normally invited or permitted access;

“enclosed workplace” means the inside of a place, building, structure or vehicle that is covered by a roof completely or more than fifty percent closed to the outside air, and that employees work in or frequent;

“flavoured tobacco product” includes a tobacco product that is represented as being flavoured and contains a flavouring agent, but does not include menthol or tobacco;

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- “inspector” means an officer appointed by the Minister under section 29 and includes a police officer;
- “Minister” means the Minister responsible for health;
- “minor” means a person who has not attained 18 years of age;
- “nicotine” means the chemical substance named 3-(1-methyl-2-pyrrolidinyl)pyridine or C[10]H[14]N[2], including any salt or complex of nicotine;
- “package” means any covering, wrapper, box, container, carton or other enclosure that contains a tobacco product and includes a box, carton, cylinder, packet, pouch or tin;
- “public conveyance” means any mode of transportation that carries passengers for hire or reward;
- “publish” means to print or produce an advertisement for distribution to the public, including making it available on the Internet;
- “retailer” means a person who is engaged in a business that includes the sale of cigarette products, tobacco products or smokeless tobacco products to consumers;
- “rolling papers” means small sheets, rolls or leaves of paper sold for rolling cigarettes, either by hand or with a rolling machine;
- “smokeless tobacco product” means any tobacco product that consists of cut, ground, powered or leaf tobacco that is intended for oral or nasal use;
- “smoking” means inhaling, exhaling or handling an ignited or heated cigarette product or tobacco product, or a cigarette product or tobacco product producing emissions by any means;
- “tobacco” means any plant of *nicotima tobaccum* or *nicotima bastica*, or any other plant related to *nicotima tobaccum* or *nicotima bastica*, or any leaf or fruit of that plant;
- “tobacco product” means a product composed in whole or in part from the leaf of the tobacco plant as raw material which is manufactured for human consumption;
- “vending machine” means an electronic or mechanical device that, on the insertion of any coin or other types of money or token, dispenses cigarette products or tobacco products;
- “wholesale distributor” means a company that handles the wholesale shipment of cigarette products or tobacco products and the supply of such to retailers.

PART 2
PROHIBITION ON SMOKING

Prohibition on smoking in certain areas

3 (1) No person shall smoke a cigarette product or tobacco product in any enclosed public place, enclosed workplace or public conveyance, including but not limited to any place listed in Schedule 1 Part 1.

(2) No person shall smoke a cigarette product or tobacco product on the parts of buildings and land ancillary to the places listed in Schedule 1 Part 2.

Offence and penalty under Part 2

4 Any person who contravenes section 3 commits an offence and is liable on summary conviction to a fine of \$1,000.

PART 3
PACKAGING AND LABELLING

Health warning on cigarette product, tobacco product or smokeless tobacco product

5 (1) No person shall sell, offer for sale or possess for the purpose of sale any cigarette product, tobacco product or smokeless tobacco product unless the package bears a health warning as provided in Schedule 2 Part 1 A or B (as the case may be).

(2) The health warning referred to in subsection (1) shall cover 30% of the two principal display surface areas and be located in the lower half of each package in such a way that the warning is not damaged when the package is opened.

Prohibition on obscuring health warning

6 (1) No person shall sell, offer for sale or possess for the purpose of sale a cigarette product, tobacco product or smokeless tobacco product with its health warning covered or obscured.

(2) No person shall sell, offer for sale or possess for the purpose of sale any product or device that is used or intended to be used to cover, obscure or alter the health warning required under section 5.

False information on package

7 (1) No person shall sell, offer for sale or possess for the purpose of sale a cigarette product, tobacco product or smokeless tobacco product if the package contains—

- (a) any information that is false, misleading, deceptive, or is likely or intended, directly or indirectly, to create an incorrect impression about the characteristics, health effects or health hazards of such products;

- (b) any claim suggesting or implying that its use or exposure to its smoke is not hazardous or less hazardous than other cigarette products, tobacco products or smokeless tobacco products or brands.
- (2) This section includes but is not limited to the use of—
- (a) words or descriptors, whether or not a part of the brand name, such as “ultra light”, “light”, “mild”, “low tar”, “slim” or similar words or descriptors;
 - (b) any graphics associated with, or likely to be associated with, such words or descriptors;
 - (c) any package design characteristics associated with or like or intended to be associated with such descriptors.

Language of labelling information

8 No person shall sell, offer for sale or possess for the purpose of sale any cigarette product, tobacco product or smokeless tobacco product with labelling information that does not contain English.

Offences and penalties under Part 3

9 (1) Any person who contravenes section 5(1), 6 or 7 commits an offence and is liable on summary conviction to a fine of \$5,000.

(2) Any person who contravenes section 8 commits an offence and is liable on summary conviction to a fine of \$5,000.

PART 4

ACCESS

Prohibition on retail display

10 No retailer shall display or permit the display of cigarette products, tobacco products, smokeless tobacco products or rolling papers in a retail shop—

- (a) by means of a counter-top display;
- (b) in any manner that allows the purchaser to handle the cigarette product, tobacco product, smokeless tobacco product or rolling papers before purchasing them;
- (c) within 3 metres of confectionary, snacks, toys and other items or objects that may be reasonably considered to be appealing to minors.

Offence and penalty under Part 4

11 Any retailer who contravenes section 10 commits an offence and is liable on summary conviction to a fine of \$5,000.

PART 5

ADVERTISING AND PROMOTION

Product advertisement

12 A cigarette product, tobacco product or smokeless tobacco product advertisement is any form of communication, recommendation or action with the effect or likely effect of promoting—

- (a) the purchase or use of a cigarette product, tobacco product or smokeless tobacco product;
- (b) the brand of a cigarette product, tobacco product or smokeless tobacco product.

Health warning in an advertisement

13 No person shall display, publish or distribute for the purpose of display any cigarette product, tobacco product or smokeless tobacco product advertisement unless the advertisement has a health warning as provided in Schedule 2 Part 2.

Advertising

14 No person shall display or promote a cigarette product, tobacco product or smokeless tobacco product by means of an advertisement that depicts, in whole or in part, a cigarette product, tobacco product or smokeless tobacco product, its package or brand.

Point of sale advertising

15 No retailer shall advertise or promote cigarette products, tobacco products, smokeless tobacco products or rolling papers at the part of the premises where such products are offered for sale.

False promotion

16 No person shall advertise or promote a cigarette product, tobacco product or smokeless tobacco product in a manner that is false, misleading or deceptive or that is likely to create an incorrect impression about the characteristics, health effects or health hazards of a cigarette product, tobacco product or smokeless tobacco product.

Non-tobacco product

17 No person shall advertise, promote or sell a cigarette product, tobacco product or smokeless tobacco product if —

- (a) any of its brand is displayed on a non-tobacco product;
- (b) the non-tobacco product is associated with minors; or
- (c) the non-tobacco product could be reasonably considered to be appealing to minors.

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Promotion at a public event

18 No person shall employ or authorise anyone to promote cigarette products, tobacco products or smokeless tobacco products at any place where the public is invited.

Sponsorship promotion

19 No person shall display a cigarette product, tobacco product or smokeless tobacco product brand in a promotion that is used in the sponsorship of a person, team, event or activity.

Sales promotion

20 No retailer shall—

- (a) offer or provide any consideration for the purchase of cigarette products, tobacco products or smokeless tobacco products including a gift, prize, bonus or other benefit to the purchaser;
- (b) furnish a cigarette product, tobacco product or smokeless tobacco product without monetary consideration.

Offences and penalties under Part 5

21 (1) Any person who contravenes section 13, 14, 15, 16 or 17 commits an offence and is liable on summary conviction to a fine of \$5,000.

(2) Any person who contravenes section 18, 19 or 20 commits an offence and is liable on summary conviction to a fine of \$5,000.

PART 6

PROHIBITION ON SALE

Prohibition on sale to a minor

22 (1) No person shall sell cigarette products, tobacco products, smokeless tobacco products or rolling papers to a minor.

(2) A person selling cigarette products, tobacco products, smokeless tobacco products or rolling papers to a person who appears to be a minor shall require photo identification as proof that such person is not a minor.

(3) A retailer shall cause to be conspicuously displayed at all times at the point of sale of cigarette products, tobacco products, smokeless tobacco products or rolling papers, a warning notice containing the wording provided in Schedule 3.

(4) A person does not contravene subsection (1) if it is established that he attempted to verify that the person was at least 18 years of age by requiring and being shown identification to verify the person's age and believed on reasonable grounds that the identification was valid.

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Prohibition on sale of product to resemble cigarette product or tobacco product

23 No person shall import or manufacture, sell, offer for sale or display for sale, or supply any confectionery, snacks, toys or other products or objects in the form of cigarette products or tobacco products, or which resemble cigarette products or tobacco products.

Prohibition on display of brand

24 No person shall sell or offer for sale any accessory that displays the brand of a cigarette product, tobacco product or smokeless tobacco product.

Sale from vending machine prohibited

25 No person shall cause or allow the presence or use of a vending machine for selling or dispensing cigarette products or tobacco products at the place he owns or occupies.

Prohibition on flavoured tobacco

26 No person shall sell, offer for sale or permit the sale of flavoured tobacco products.

Prohibition on sale in certain places

27 (1) No person shall sell cigarette products, tobacco products or smokeless tobacco products in any of the following places—

- (a) health care facilities;
- (b) educational facilities;
- (c) day care facilities and preschools;
- (d) government buildings.

(2) The Minister may by regulations amend subsection (1).

(3) Regulations made under subsection (2) are subject to the negative resolution procedure.

Offences and penalties under Part 6

28 (1) Any person who contravenes section 22, 25 or 27 commits an offence and is liable on summary conviction to a fine of \$10,000.

(2) Any person who contravenes section 23, 24 or 26 commits an offence and is liable on summary conviction to a fine of \$5,000.

PART 7 ENFORCEMENT

Designation of inspectors

29 The Minister may designate a public officer to be an inspector for the purposes of enforcement of this Act and shall furnish every such person with a certificate of his designation signed by the Minister and the person so designated.

Power to make test purchases

30 An inspector may, for the purposes of enforcement of this Act or any regulations, make test purchases of cigarette products, tobacco products, smokeless tobacco products or related products, or otherwise ascertain whether any provisions of this Act or regulations made under this Act are being complied with.

Power to enter premises and to seize goods, etc.

31 (1) An inspector who has reasonable cause to believe that an offence under this Act or regulations made under this Act has been committed, may at all reasonable times and on production of his credentials enter any premises other than premises or parts of premises used exclusively as a dwelling house and while there may—

- (a) inspect any cigarette product, tobacco product or smokeless tobacco product found;
- (b) require any retailer or employee to produce books or documents relating to the business and to permit the inspector to take copies of or any entry in such books or documents;
- (c) seize and detain cigarette products, tobacco products, smokeless tobacco products, related products or documents which he believes may be required as evidence in proceedings under this Act;
- (d) for the purpose of exercising his powers to seize goods under this section and to the extent that it is reasonably necessary in order to ensure compliance with any provision referred to in this section, require any person having authority to do so to break open any container, and if the person does not comply, the inspector may do so himself.

(2) An inspector who seizes cigarette products, tobacco products, smokeless tobacco products, related products or documents in exercise of his powers under subsection (1) shall, in a written statement specifying the nature and amount of items seized, inform the person from whom they are seized.

(3) For the purpose of proceedings taken or transactions made under this Act, the written statement of an inspector given under subsection (2) has effect as a receipt for the goods or documents seized.

(4) A magistrate who is satisfied by sworn information in writing that there are reasonable grounds to believe that—

- (a) cigarette products, tobacco products, smokeless tobacco products, related products or documents which an inspector has power to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under this Act or regulations made under this Act; or
- (b) an offence under this Act or regulations made under this Act has been, is being, or is about to be committed on any premises;

and that—

- (c) admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or
- (d) an application for admission or the giving of the notice mentioned in paragraph (c) would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

may by warrant under his hand, which shall continue in force for a period of one month, authorise any inspector to enter the premises, if need be by force.

(5) An inspector who enters premises by virtue of this section may take with him such other persons and equipment as appears necessary to him, and on leaving premises which he enters by virtue of a warrant under subsection (4), where either the premises are unoccupied or the occupier is temporarily absent, he shall affix a notice in a conspicuous place stating that the premises were entered for the purpose of this section, and as far as practicable shall leave the premises as effectively secured against trespassers as he found them.

(6) When exercising powers under this Act, an inspector shall present proof of identity as an inspector.

Obstructing, failing to comply, giving false information etc. to an inspector

32 No person shall—

- (a) wilfully obstruct an inspector acting in the exercise of any power conferred on him by or under section 31;
- (b) wilfully fail to comply with any requirement properly made to him by an inspector under section 31;
- (c) without reasonable cause fail to give an inspector acting under section 31 such assistance or information as he may reasonably require of the person for the performance of the inspector's functions under this Part;
- (d) in giving information as mentioned in paragraph (c), make a statement which he knows to be false;
- (e) not being an inspector purport to act as an inspector under this Act;
- (f) disclose to another person, where the disclosure is not made in the performance of his duty information otherwise obtained by him under this Act.

Compensation

33 (1) Where in the exercise of his powers under section 31 an inspector seizes and detains any goods, and the owner suffers loss by reason of the goods being seized or by reason that, during the detention, the goods are lost or damaged or deteriorate, unless the owner is convicted of an offence under this Act committed in relation to the goods, the owner is entitled to compensation for the loss so suffered.

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(2) Any disputed question as to the right to or the amount of any compensation payable under this section shall on the written application of the owner or of the Attorney-General be determined as follows—

- (a) if the amount of the compensation claimed does not exceed \$10,000, by a magistrate; or
- (b) if the amount of the compensation claimed exceeds \$10,000, by a judge of the Supreme Court,

in like manner as if the magistrate or the judge were a single arbitrator appointed pursuant to the provisions of the Arbitration Act 1986, and the provisions of that Act shall apply accordingly.

Inspector's report

34 An inspector shall within one week of conducting an inspection, make a written report to the Director of Health.

Wholesale distributor to register and submit a report

35 (1) Every wholesale distributor shall apply in a form determined by the Minister—

- (a) to register with the Department of Health;
- (b) to re-register with the Department of Health annually.

(2) An application for registration under subsection (1)(a) shall be accompanied such fee as may be prescribed in the Government Fees Regulations 1976.

(3) An application for re-registration under subsection (1)(b) shall be accompanied by such fee as may be prescribed in the Government Fees Regulations 1976.

(4) A wholesale distributor registered under subsection (1) shall submit to the Minister an annual report in such form and containing such information as the Minister may direct.

Offences and penalties under Part 7

36 (1) Any person who contravenes section 32 commits an offence and is liable on summary conviction to a fine of \$1,000.

(2) Any person who contravenes section 35 commits an offence and is liable on summary conviction to a fine of \$1,000.

PART 8

MISCELLANEOUS

Obligation of employer

37 (1) An employer shall, in respect of an enclosed workplace—

- (a) ensure that the environment is smoke free;

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- (b) inform all employees that the environment is smoke free;
- (c) post no-smoking signage in conspicuous places;
- (d) take such action as he considers appropriate where any employee does not comply with the prohibition on smoking.

(2) For the purposes of this section, “smoke” means the emissions from a cigarette product or tobacco product.

(3) Any employer who contravenes this section commits an offence and is liable on summary conviction to a fine of \$1,000.

General penalty

38 Any person who commits an offence under this Act for which no penalty is expressly provided shall be liable on summary conviction to a fine not exceeding \$5,000.

Regulations

- 39 (1) The Minister may make regulations—
- (a) to amend the Schedules to this Act;
 - (b) as may appear to him necessary or desirable for the purposes of this Act.
- (2) The negative resolution procedure shall apply to regulations made under this Act.

Consequential amendments

40 (1) The National Drug Control Act 2013 is amended in section 1 by deleting the definition of “tobacco” and “tobacco products” and substituting—

“tobacco” and “tobacco products” have the meanings given in section 2 of the Tobacco Control Act 2015.”.

(2) The Government Fees Regulations 1976 are amended by inserting the following after “Head 68”—

Head 68A	
Tobacco Control Act 2015	
(1) An application for registration as a wholesale distributor under section 35(2)	\$5, 000
(2) An application for re-registration as a wholesale distributor under section 35(3)	\$2,500

Repeal and revocation

- 41 (1) The Tobacco Products (Public Health) Act 1987 is hereby repealed.
- (2) The Tobacco Products (Public Health) Regulations 1988 are hereby revoked.

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Commencement

42 This Act comes into operation on 31 July 2016.

SCHEDULE 1

(Section 3)

NO SMOKING AREAS

PART 1

Places in which smoking is prohibited

- (a) Health facilities
- (b) Residential care facilities
- (c) Educational facilities
- (d) Day care facilities and preschools
- (e) Public conveyances
- (f) Office buildings
- (g) Hotels
- (h) Public transportation terminals
- (i) Vehicles owned by an employer and used by employees in the course of employment
- (j) Sports facilities and recreational facilities
- (k) Theatres and cinemas
- (l) Night clubs
- (m) Shopping malls
- (n) Bars and restaurants
- (o) Retail establishments
- (p) Any other facilities accessible by the public

PART 2

Premises on which smoking is prohibited

- (a) Health care facilities, except the Mid-Atlantic Wellness Institute
- (b) Residential care facilities
- (c) Educational facilities
- (d) Day care facilities and preschools
- (e) Public transportation terminals, except the L.F. Wade International Airport
- (f) The Bermuda National Library
- (g) The Bermuda National Library Youth Library

[Schedule 1 Part 2 amended by BR 108 / 2016 reg. 2 effective 29 November 2016]

SCHEDULE 2

(Sections 5 and 13)

HEALTH WARNINGS

PART 1

Cigarette Products or Tobacco Products

A

“WARNING: SMOKING CAUSES CANCER”
“WARNING: SMOKING CAUSES HEART DISEASE”
“WARNING: SMOKING KILLS”
“WARNING: SMOKING CAUSES LUNG CANCER”
“WARNING: SMOKING CAUSES MOUTH AND THROAT CANCER”
“WARNING: SMOKING DOUBLES YOUR RISK OF STROKE”
“WARNING: TOBACCO SMOKE IS TOXIC”
“WARNING: TOBACCO SMOKE CAN HARM YOUR CHILDREN”
“WARNING: SMOKING WHEN PREGNANT HARMS YOUR BABY”
“SMOKING SERIOUSLY HARMS YOU AND THOSE AROUND YOU”

Smokeless Tobacco

B

“WARNING: This product can cause mouth cancer”
“WARNING: This product can cause gum disease and tooth loss”
“WARNING: This product is not a safe alternative to cigarettes”
“WARNING: Smokeless tobacco is addictive”

PART 2

Advertisements

“HEALTH WARNING: Smoking is hazardous to your health”
“HEALTH WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health”
“HEALTH WARNING: Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight”
“HEALTH WARNING: Cigarette Smoke Contains Carbon Monoxide”
“HEALTH WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy”

SCHEDULE 3

(Section 22)

WARNING NOTICES

“IT IS ILLEGAL TO SELL TOBACCO PRODUCTS TO A PERSON UNDER THE AGE OF 18”

“THE SALE OF TOBACCO PRODUCTS TO A PERSON UNDER THE AGE OF 18 IS PROHIBITED”

[Assent Date: 23 December 2015]

[Operative Date: 31 July 2016]

[Amended by:

BR 108 / 2016]