

Tobacco Products (Control and Regulatory) Act, 2068 (2011)

Date of Authentication and Publication

2068-01-26 (May 9, 2011)

Amendment:

Amendment of Some Nepal

Act Amendment Act, 2072 (2016)

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Preamble,

Whereas, it is expedient to make legal provision to reduce, control and regulate the import, production, sales and distribution and consumption of tobacco products as smoking and tobacco consumption is terribly injurious to human health and they also have adverse effect on social, economic and cultural activities; and Whereas, it is expedient to control such activities in order to improve the health, facility and economic interest of general public:

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

Chapter -1

Preliminary

1. **Short Title and Commencement:** (1) This Act may be called "Tobacco Product (Control and Regulation) Act, 2068 (2011).

(2) Section 9 of this Act shall come into force from one hundred eightieth days and remaining Sections shall come into force from the ninety-first day of its authentication.

2. Definitions: Unless otherwise stated by the subject or context in this Act,-

- (A) "Tobacco products" means cigarette, quid of tobacco, cigar, tamakhu, sulphha and kakkad, crude tobacco, chewing tobacco (khaini), guthkha, tobacco leaves or similar types of products prepared or manufactured for smoking or for consumption.
- (B) "Smoking" means any act of consuming cigarette, bindi (quid of tobacco), cigar, tamakhu, sulphha, kakkad, chewing tobacco or any types of similar products.
- (C) "Consumption of tobacco" means any act to be used either by smoking, sucking, snuffing or consuming khaini, guthkha, chewing tobacco or any other products to be put into mouth or to be snuffed.
- (D) "Public place" means the places as prescribed in Section 3.
- (E) "Manager" means the person who has the ultimate authority to make decisions on matter of affairs in the public place and the term shall also dente in case of public vehicle and the word also denote the driver of such vehicle.
- (F) "Manufacturer" means the manufacturer of tobacco products.
- (G) "Inspector" means the person as prescribed pursuant to Section 11.
- (H) "Ministry" means the Ministry of Health and Population.
- (I) "Committee" means the "Committee for Control and Regulation of Tobacco Product constituted pursuant to Section 19.
- (J) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Chapter 2

Control of Tobacco Products

3. To be deemed Public Places: (1) The following places shall be deemed as public places:

- (A) The bodies, institutions or offices of the State and of the Government,
- (B) Educational institutions, libraries, training and health related institutions,
- (C) Airport, airlines service and vehicles of public transportation,
- (D) Child Welfare Homes, Child Care Centers, Hermitage for senior citizens (Bridhashram), Orphanage, Children Park and Club,
- (E) Public latrines,
- (F) Workplace of industries and factories,
Clarification: For the purpose of this Part, workplace means an office or space allocated by the industry and factory to perform the function.
- (G) Cinema hall, cultural centers and theatres,
- (H) Hotel, motel, resort, restaurant, bar, dining hall, canteen, lodge, hostel and guest houses,
- (I) Stadium, covered halls, gymnasium, swimming pool and pool houses,
- (J) Departmental store and mini market,
- (K) Pilgrimage and religious places,
- (L) Waiting-space for public vehicle and ticket counter.

(2) In addition to the places as mentioned in Sub-Section (1), other places as prescribed by Government of Nepal by giving due consideration to importance and sensitiveness of such places by publishing notice in the Nepal Gazette.

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

(2) Notwithstanding anything contained in Sub-Section (1), a manager may make necessary arrangement in any particular place in prison, airport or tourist level hotels for smoking or consumption of tobacco subject not to make any adverse effect to other people.

(3) The basic requirements to be maintained in the places as specified for smoking and consumption of tobacco in accordance with Sub-Section (2) shall be as prescribed.

5 Public Notice to be displayed: The manager shall affix a visible or readable notice in different places, as required of their own public place, indicating that smoking and tobacco consumption is prohibited.

6. Prohibition of smoking in home or private vehicle: No person shall be allowed to smoke in house or on private vehicle in a way to make affect to other person.

Chapter 3

Production, Sales and Distribution of Tobacco Products

7. Label, Trademark, Wrappers and Packaging: (1) The manufactures shall mention the following details on the packet or wrappers of the tobacco products:-

- (A) Label and trademark registered as per the prevailing law,
- (B) Name and address of the manufacturer and the quantity of nicotine in the tobacco.

(C) Other prescribed hazardous components and necessary information's.

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

(3) No one shall be allowed to manufacture tobacco products using brand and trade name of other industry or products.

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

8. Statement to be submitted: (1) The manufacture shall submit the statement of the quantity of nicotine, hazardous elements including other required things contains in the tobacco products to Ministry before sales or distribution of such products.

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

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

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

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

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

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

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

(3) No person shall be allowed to sell and distribute tobacco products from any home or shop having under the distance of 100 meter from educational and health institutions, child welfare homes, child care centers, elders' care home, and other public places as prescribed by Government of Nepal by publishing a notice in the Nepal Gazette.

(4) Government of Nepal may prohibit the retail sales and distribution of cigarette, quid of tobacco (Bidi) or cigar stick by publishing notice in the Nepal Gazette.

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

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

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

Chapter 4

Inspection, Investigation and Prosecution

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

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

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

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

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

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

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

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

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

(4) In case a manager smokes or consumes tobacco in accordance with Sub-Section (3), the person witnessing such event or having knowledge thereof may complain to the inspector.

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

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

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

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

Chapter -5

Punishment and Appeal

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

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

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

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

(3) The amount received as fine pursuant to clause (A) of sub- Section (1) shall be deposited by the manager in revenue account.

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

(5) The adjudicating authority shall impose the following punishment to the concerned person in following situation:-

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

18 Appeal: The person who is not satisfied with the decision made by the adjudicating authority pursuant to sub-Section (5) of the Section 17 may file an appeal to the concerned District¹ court within thirty five days of such decision.

Chapter -6

Miscellaneous

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

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

¹ Amendment by Some Nepal Act amendment Act,2072 (2916)

social workers -----Member

(f) Legal Officer, Ministry of Health and Population-----Member Secretary

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

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

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

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

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

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

(A) To provide suggestion, with regards to policy and law to be adopted and reform for control and regulation of tobacco products;

(B) To launch awareness programs about the harmful effects of smoking and tobacco in order to discourage such activities,

(C) To adopt and cause to be adopted necessary measures to help people quit smoking and tobacco consumption and support them for healthy living;

(D) To monitor and evaluate the works and activities of Inspectors,

- (E) To coordinate with the concerned body for inclusion of educational materials in curriculum about harmful effects of tobacco products,
- (F) To conduct necessary actions for reduction of import, production, sales, distribution and consumption of tobacco products.
- (G) To arrange, make available and mobilize necessary resources for control and prevention of diseases caused by consumption of tobacco products and control of import, production, sale, distribution and consumption of tobacco products,
- (H) To direct Inspectors on matters relating to their works and activities,
- (I) To carry out and cause to carry out act as prescribed.

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

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

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

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

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

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

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