

THE TOBACCO CONTROL BILL, 2009

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AS AMENDED IN THE SENATE

No. 9 of 2009

Second Session Ninth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to prevent tobacco use by children; regulate tobacco use by individuals; enhance public awareness of the hazards of tobacco use and ensure that individuals are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit and restrict promotional practices; prevent smuggling of tobacco; provide for regulation of tobacco products to mitigate against the harmful effects of tobacco; and provide for other related matters.

THE TOBACCO CONTROL BILL, 2009

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, 2009 (“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 of the Bill would provide for the short title, commencement, the Act’s inconsistency with the Constitution and interpretation, respectively.

Clause 5 of the Bill seeks to establish a Unit within the Ministry responsible for tobacco control.

Clause 6 of the Bill would outline the functions of the Unit.

Clause 7 of the Bill would outline the functions of authorized officers under the Act.

Clause 8 of the Bill would outline the powers of authorized officers, which would include seizure and detention of tobacco products.

Clause 9 of the Bill would require authorized officers to provide proof of identification when required to do so.

Clause 10 of the Bill would outline the licensing procedure and transitional period of nine months for acquiring a licence under the Act.

Clause 11 of the Bill would outline the type of information that would be required in reports that are to be submitted to the Minister on a quarterly basis.

Clause 12 of the Bill would seek to prohibit smoking in certain areas.

Clause 13 of the Bill would seek to prohibit sale of tobacco products by minors.

Clauses 14, 15 and 16 of the Bill would seek to prohibit self-service displays, public displays and sale of tobacco products, respectively.

Clause 17 of the Bill would seek to prohibit the sale of tobacco products in certain places.

Clause 18 of the Bill would seek to prohibit the sale of toy or candy cigarettes.

Clause 19 of the Bill would seek to prohibit tobacco advertising.

Clause 20 of the Bill would seek to prohibit incentive promotion and the free supply of tobacco products.

Clauses 21 and 22 of the Bill would seek to prohibit sponsorships and other forms of promotion.

Clause 23 of the Bill would prohibit sellers of tobacco products from selling tobacco products that do not conform with the packaging and labelling requirements under the Act.

Clause 24 of the Bill seeks to deal with the labelling requirements under the Act.

Clause 25 of the Bill would require all tobacco products to 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 prescribed by Regulations to be made under the Act.

Clause 26 of the Bill would seek to prevent product packages and labels from containing any information that is false, misleading, deceptive, or is likely or intended, directly or indirectly, to create an erroneous impression about the characteristics, health effects or other hazards of the tobacco product or its emissions.

Clause 27 of the Bill would seek to outline the process of labelling where multiple packaging is used.

Clause 28 of the Bill would require tobacco product manufacturers, exporters and importers, to ensure that bulk packaging contains tracking, tracing and tax status labelling information.

Clause 29 of the Bill would require tobacco product manufacturers to design their product packaging and labelling in such a way as to make them tamper-proof, using the best available technology.

Clause 30 of the Bill would require the labelling information on a tobacco product to be sold in Trinidad and Tobago to be printed exclusively in English.

Clauses 31 and 32 of the Bill would address the minimum size for smoked and smokeless tobacco products, respectively.

Clauses 33 and 34 of the Bill would seek to address matters pertaining to compliance and evidence, respectively.

Clause 35 of the Bill would seek to provide protection for employees who testify against an employer in an action brought under this Act.

Clauses 36 and 37 of the Bill would provide for penalties and liabilities and for penalties where none are prescribed, respectively.

Clause 38 of the Bill would provide for the making of Regulations and Orders.

BILL

AN ACT to prevent tobacco use by children; regulate tobacco use by individuals; enhance public awareness of the hazards of tobacco use and ensure that individuals are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit and restrict promotional practices; prevent smuggling of tobacco; provide for regulation of tobacco products to mitigate against the harmful effects of tobacco; and provide for other related matters.

[, 2009]

Preamble

WHEREAS the use of tobacco products is responsible for numerous debilitating and fatal diseases:

And whereas smoke from tobacco products is a serious health threat to **persons** exposed to the smoke, causing serious diseases in adults and children:

And whereas most smokers who start smoking at a very young age are not aware of the extent and nature of the harm caused by tobacco products, and because of the addictive properties of nicotine, are often unable to quit even when they are highly motivated to do so:

And whereas the marketing of tobacco products through product design, promotion, packaging, pricing and distribution, is known to contribute to the demand for tobacco products:

And whereas resolving to align national laws with the World Health Organization Framework Convention on Tobacco Control, the following measures are undertaken to protect the health and well being of all the people:

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:

PART I

PRELIMINARY

1. This Act may be cited as the Tobacco Control Short title Act, 2009.
2. This Act shall come into effect on such date as is Commencement fixed by the President by Proclamation.
3. This Act has effect even though inconsistent with Act inconsistent with Constitution sections 4 and 5 of the Constitution.
4. In this Act— Interpretation
 - “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;
 - “authorized officer” means a police officer, customs officer or public health inspector;
 - “bulk packaging” means packaging containing at least ten thousand cigarettes or cigars, or packaging containing more than **two hundred grams** of other tobacco products;
 - “child” means an individual under the age of eighteen years;

“constituents” means, in relation to—

- (a) smoked tobacco products, the chemicals, including the particles, vapours and gases found in the smoke; and
- (b) smokeless tobacco products, the chemicals found in the product itself;

“Convention” means The World Health Convention on Tobacco Control of 2003;

“enclosed” in relation to a space, means any space covered by a roof **completely or substantially enclosed, with the term substantially enclosed meaning more than fifty per cent closed to the outside air;**

“factual information” means the brand name, manufacturer’s name, type of product, prescribed messages, constituents, additives, disclosures and price information;

“graphic” means any symbol, sign, logo, mark, trademark, pattern, emblem, design, crèche, or any other indicia of tobacco product or seller identification;

“manufacturer” means a person who manufactures, fabricates, produces, processes, packages or labels tobacco products;

“message” means a warning or other information about the health effects of tobacco use or exposure to tobacco smoke;

“Minister” means the Minister to whom responsibility for health is assigned;

“Ministry” means the Ministry with responsibility for health;

“package” means any covering, wrapper, container, carton or other enclosure that contains a tobacco product including labels and other written or graphic information on or in it;

“person” includes any individual, proprietor, firm, partnership, corporation, franchise, organization, agency, association or institution;

“public conveyance” means any form or mode of transportation that carries passengers for hire or reward, whether domestically or internationally;

“public place” means any place accessible to the general public or place of collective use, regardless of ownership or right of access;

“Regulations” means Regulations made under this Act;

“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 advertising and promotion” means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

“tobacco product” means any product entirely or partly made from the leaf of the tobacco as raw material which is manufactured to be used for smoking, sucking, chewing or snuffing;

“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 sponsorship” means any form of contribution to any event, activity, organization, or individual that has the aim, effect or likely effect of promoting a tobacco product or tobacco use directly or indirectly;

“Unit” means the Unit referred to in section 5;

“work” includes work done for compensation and voluntary work;

“workplace” means any place used by persons during their employment or work and includes vehicles, common areas, and any other area which is generally used during the course of employment or work, but does not include private residences or private vehicles.

PART II

ADMINISTRATIVE

5. (1) The Minister shall establish a Unit within the ^{Unit established in} Ministry which shall be responsible for—

- (a) developing and implementing, in collaboration with civil society, a national strategic approach to tobacco control;
- (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;
- (e) monitoring activities nationally to ensure compliance with and enforcement of this Act; **and**
- (f) **considering and evaluating applications for licences on behalf of the Minister.**

(2) The Unit shall be headed by a Director appointed by the Minister and who shall be responsible to the Permanent Secretary of the Ministry;

(3) The Unit shall be provided with adequate staff with the requisite qualifications and experience for the discharge of its functions.

6. (1) The Unit shall establish and carry out ^{Function of Unit} evidence-based programmes to inform the public of—

- (a) the dangers and addictiveness of tobacco use and the dangers of exposure to tobacco smoke;

- (b) the benefits of and strategies to quit smoking;
- (c) the tobacco industry and on the health, economic and environmental effects of tobacco production and manufacturing; and
- (d) any other information it determines to be effective in highlighting the health effects, social and environmental costs of tobacco and for increasing public and consumer awareness of pertinent tobacco related issues.
- (e) alternative income earning opportunities for small retailers.**

(2) The Unit shall—

- (a) make educational and cessation materials available to municipal corporations, health care workers and facilities, schools, the media, non-governmental organizations and such other entities as it deems appropriate;
- (b) develop evidence-based educational programmes and materials appropriate to the population at large;
- (c) establish evidence-based tobacco use cessation programmes, including diagnosis, counselling and treatment services and, as appropriate, access to nicotine replacement therapies; and
- (d) train authorized officers.**

Function of
authorized officers

7. The Unit may request authorized officers to carry out inspections and investigations.

Power of authorized
officers

8. (1) Subject to subsection (2), authorized officers shall have the power to—

- (a) examine, open, and **cause to be tested** any equipment, tools, materials, packages or anything the authorized officer reasonably believes is used or is capable of being used

for the manufacture, including packaging and labelling, storage, distribution, advertising or promotion of tobacco products;

- (b) examine any manufacturing operation or process carried out on the premises;
- (c) examine and make copies of or from any books, documents, notes, files, including electronic files, or other records that the authorized officer reasonably believes might contain information relevant to determining compliance with this Act;
- (d) interview any person the authorized officer believes may have information relevant to making a compliance determination; and
- (e) take samples of tobacco products or components of products, and their packaging, from any business where they are found, to have them tested.

(2) Only authorized officers who are either customs officers or police officers shall have the power **after obtaining the consent of the owner, manager or lessee or after obtaining a warrant** to—

- (a) enter the premises of any business 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, but for the purposes of enforcing this Act, authorized officers may enter any public place, workplace or means of public transportation to conduct inspections or investigations at any time during business or operating hours or at any other necessary time;
- (b) stop, search, and detain any aircraft, ship, vehicle or other means of transport or storage in which the authorized officer reasonably believes bulk packaging of tobacco products are or were contained or conveyed, and examine, open, and take samples; and

(c) seize and detain from any business or order the storage without removal or alteration of any tobacco product or other item the authorized officer reasonably believes does not comply with this Act.

(3) In acting under subsection (2)(c), the authorized officer shall provide the person in possession of the tobacco products or other items with **a written record in respect of the tobacco products or other items seized and detained** and the grounds for same.

(4) Where any seized and detained tobacco product or other item is determined to have met the legal requirements, it shall be returned to the premises from which it was seized **within thirty working days of seizure**.

(5) Where any seized and detained tobacco product or other item does not meet the legal requirements, it may be confiscated and kept as evidence in legal proceedings.

(6) No authorized officer shall abuse his authority or his position for personal or financial gain.

Identification of
authorized officers

9. (1) In exercising their functions under this Act, authorized officers shall present proof of identity.

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

Licensing procedure
and transitional
period

10. (1) No person shall manufacture, import, export or distribute tobacco products at wholesale without first having been issued a licence.

(2) Notwithstanding subsection (1), persons engaged in the business of manufacturing, importing, exporting or distributing tobacco products at wholesale prior to the coming into force of this Act shall have a transitional period of nine months **to obtain** a licence from the date this Act comes into force.

(3) The Minister shall serve as the licensing authority under this Act.

(4) The application fees set out in the First ^{First Schedule} Schedule shall be paid to the Comptroller of Accounts or any other Revenue Office and the receipt shall be submitted with the application.

(5) An application for a licence under this Act shall be addressed to the Minister and submitted in duplicate.

(6) The application shall contain the following particulars:

- (a) the name, place of business and the nature of business of the applicant;
- (b) the name and address of the manufacturer of the tobacco product;
- (c) the trade name and registration number of the tobacco product; and
- (d) any other particulars as prescribed by Regulations.

(7) A licence once granted—

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

(8) Where an application for a licence is denied, the applicant shall cease manufacturing, importing, exporting or selling tobacco products immediately upon notification of same.

(9) Where a person applies for the grant of a licence after the expiry of the transitional period referred to in subsection (2), the applicant may continue to manufacture, import, export or distribute tobacco products at wholesale until notice is received by the applicant that the application is approved or denied as the case may be.

(10) Subject to subsection (1), no person shall—

- (a) sell any tobacco product to; or
- (b) purchase or acquire any tobacco product from,

any manufacturer, distributor, importer, exporter or wholesaler who is not licensed under this Act.

Information required
in reports

11. (1) Every manufacturer and importer of tobacco products shall submit to the Minister on **an annual** basis reports containing the information required under this Act and Regulations.

(2) **Annual** reports shall include information prescribed by Regulations, including but not limited to information on—

- (a) import and export;
- (b) business sales, marketing and distribution;
- (c) new products or brands;
- (d) constituents, additives, and of toxic constituents and additives in smoke, expressed in their individual concentrations and as a ratio to nicotine; and
- (e) product packaging and labelling,

of all tobacco products.

(3) Reports shall be made on the basis of products prepared and tested in accordance with the methods prescribed in Regulations.

(4) Reports shall be submitted in the form and manner as prescribed by Regulations.

(5) No person shall disclose any information contained in the Report unless required by the provisions of this Act or any other written law or by Order of the Court.

(6) A person who contravenes subsection (5) is liable on summary conviction to a fine of five thousand dollars and imprisonment for three years.

PART III
PROHIBITIONS

12. (1) No person shall smoke or hold a lighted tobacco product in any enclosed public place, enclosed workplace, or public conveyance including but not limited to any place listed in the Second Schedule. Second Schedule

(2) Where a person contravenes subsection (1), No smoking areas the manager, owner or lessee of the place where the contravention occurred who authorized or acquiesced in the act, that manager, owner or lessee is deemed to have committed the offence and shall also be held personally liable.

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

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

(2) No person who sell tobacco products Prohibition on sales by minors shall hire or use any child to sell any tobacco product.

14. No person shall sell any tobacco product in such a Prohibition on self-service displays 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.

15. (1) No person shall display tobacco products in Prohibition on public displays such a way that they are visible to the public, but the prohibition against public displays of tobacco products shall not apply to individuals incidentally or accidentally displaying tobacco products during carrying or use.

(2) This section shall not apply to cigarette dispensers provided by the manufacturer, so, however, that such devices shall not be used for the purposes of advertisement or the promotion of tobacco products and shall meet the requirements prescribed by regulations.

Prohibition on self-service sales of tobacco products

16. (1) No person shall purchase any tobacco product through any self-service means, including the mail, the internet or automatic vending machines.

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

Prohibition on sales of tobacco products in certain places

17. No person shall sell tobacco products in any of the following 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 Regulations.

Prohibition on toy or candy cigarettes

18. (1) No person shall—

- (a) import or manufacture; or
- (b) sell, display for sale, distribute or supply,

any sweets, snacks, toys or other non-tobacco items or objects in the form of tobacco products, or which imitate tobacco products.

(2) A person who contravenes subsection (1)(b) commits an offence and is liable—

- (a) on summary conviction, to a fine of ten thousand dollars and to imprisonment for six months; or
- (b) on conviction on indictment, to a fine of

one hundred thousand dollars and to imprisonment for one year.

19. (1) No person shall initiate, produce, publish, engage or participate in any tobacco advertising, promotion or sponsorship. Prohibition against tobacco advertising

(2) Notwithstanding subsection (1), 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 **as determined by a recognized survey**; and
- (c) signs in a place where children 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 children.

(4) 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.

Prohibition against
incentive promotions
and free supply of
tobacco products

20. 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, but 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.

Sponsorship

21. This Act prohibits tobacco sponsorships and tobacco advertising and promotion, where the name of a sponsoring entity is publicized.

Other forms of
promotion

22. (1) No person shall sell, display for sale, supply, or advertise any non-tobacco product or service that contains either on the product, or in any advertisement of the product, a depiction of a tobacco product except where the person held the intellectual property rights to that product prior to the commencement of this Act.

(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.

PART IV

PACKAGING AND LABELLING

Conformity with
packaging and
labelling
requirements

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

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

Labelling

24. (1) All tobacco products shall contain, permanently affixed on their packages, messages as specified by Regulations.

(2) Prescribed messages shall be attributed to the relevant authority.

(3) No person may sell or supply any product, device, or other item 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.

25. (1) All tobacco products shall contain, Constituents and additives disclosure on tobacco product packages permanently affixed on their packages, a list of the constituents and additives specified, and in a manner as prescribed by Regulations.

(2) A person who fails to comply with this section commits an offence and is liable –

(a) on summary conviction, to a fine of one hundred thousand dollars and to imprisonment for six months; or

(b) on conviction on indictment, to a fine of five hundred thousand dollars and to imprisonment for one year.

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

(2) 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.

(3) 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.

Multiple packaging

27. If any tobacco product is placed in multiple layers of packaging, all 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.

Requirements for name, licence number, etc., on package

28. (1) Tobacco product manufacturers, exporters and importers, as applicable, shall ensure that bulk packaging contains the tracking, 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;
- (d) name of the country in which the product is intended for sale; and

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(e) any additional information as may be required by Regulations.

29. (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. Requirements for tamper-proof packaging and labelling

(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.

30. The labelling information on a tobacco product to be sold in Trinidad and Tobago shall be printed in English. Language of labelling information

31. (1) Smoked tobacco products, may be sold as individual units provided that they are individually labelled as required; Labelling of individual units

(2) The Minister may make Regulations to provide for a contravention of this section.

32. (1) Smokeless tobacco products shall be contained in a package of at least twenty grams. Minimum package size for smokeless tobacco products

(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 to imprisonment for six months.

PART V

MISCELLANEOUS

Compliance with Act **33.** No person shall manufacture, import, sell or commercially supply or distribute any tobacco product unless it conforms with this Act and Regulations.

Evidence **34.** In **any legal action** for non-compliance with this Act or Regulations, the following shall apply:

- (a) an affidavit or **certificate of analysis** under oath by **an** 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, but the accused shall be notified in writing in advance of the intent to produce such an affidavit or **certificate of analysis** and may compel the analyst's presence 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, as the case may be;
- (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, but 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 **wholesaler** shall be presumed to have manufactured, imported, distributed or sold the tobacco product, respectively.

35. No employer shall dismiss, suspend, demote, ^{Protection for employees} discipline, harass or otherwise disadvantage an employee or deny that employee a benefit on the ground that the employee testifies against an employer in an action brought under this Act.

36. (1) In any action for non-compliance with this Act ^{Penalties and liabilities} or Regulations, the following penalties may be imposed:

- (a) suspension, revocation or limitation of licences;
- (b) removal by an authorized officer of an offending person from the premises or public conveyance, and confiscation and forfeiture of any tobacco products in violation of the provisions of this Act; and
- (c) confiscation and forfeiture of—
 - (i) any item that contains a tobacco advertising and promotion prohibited under this Act;

- (ii) any tobacco product packaged or labelled in a manner that does not conform with this Act;
- (iii) all tobacco products owned by or under the control of the person found to have committed a violation of sections 10, 13 to 17, 20 and 31 to 33;
- (iv) equipment, machinery, raw materials, components, packaging and labelling materials, and any other items used to manufacture tobacco products;
- (v) all tobacco products or components that fail to conform with the product requirements under this Act;
- (vi) all tobacco products for which all applicable taxes and duties have not been paid or that otherwise have not legally entered the jurisdiction; and
- (vii) all non-tobacco products that fail to conform with section 18.

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

(3) Where any person derives any monetary or financial benefit directly or indirectly from any act or omission that constitutes a violation under this Act, Regulations 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 a corporate person contravenes this Act, the corporate director or other corporate officer who authorized or acquiesced in the act or who knew or, using due diligence, ought to have known that the commission or omission constituted a contravention, that director or other corporate officer as the case may be, is deemed to have committed the offence and shall be held personally liable.

37. (1) Any person who contravenes sections 13 to 17 Penalties where non-prescribed commits an offence and is liable—

(a) on summary conviction, to a fine of—

- (i) **fifty thousand dollars** and to imprisonment for three months for the first offence;
- (ii) **one hundred thousand** dollars and to imprisonment for six months for the second offence;
- (iii) **one hundred thousand** dollars and to imprisonment for nine months for the third offence; or

(b) on conviction on indictment, to a fine of **two hundred thousand** dollars and to imprisonment for one year.

(2) A person who contravenes any provision of this Act for which there is no penalty prescribed, commits an offence and is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars and to imprisonment for six months; or

(b) on conviction on indictment, to a fine of **two** hundred thousand dollars and to imprisonment for one year.

Regulations and orders

38. (1) The Minister may make Regulations subject to **affirmative** resolution of Parliament—

- (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; and
- (b) generally for carrying out the purposes of this Act.

(2) The Minister may by Order subject to **affirmative resolution of Parliament** amend the Schedules.

FIRST SCHEDULE

[Section 10(4)]

APPLICATION FOR LICENCE FEES

\$

Manufacturer	12,000
Wholesaler	6,000
Distributor	6,000
Importer	6,000
Exporter	6,000

SECOND SCHEDULE

(Section 12)

NO SMOKING AREAS

- (a) public transportation terminals
- (b) workplaces

- (c) retail establishments including bars, restaurants and shopping malls
- (d) clubs
- (e) cinemas
- (f) concert halls
- (g) sports facilities
- (h) pool and bingo halls
- (i) publicly owned facilities rented out for events
- (j) any other facilities that are accessible to the public.

Passed in the Senate this day of , 2009.

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 , 2009.

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

No. 9 of 2009

SECOND SESSION

NINTH PARLIAMENT

REPUBLIC OF

TRINIDAD AND TOBAGO

BILL

AN ACT to prevent tobacco use by children; regulate tobacco use by individuals; enhance public awareness of the hazards of tobacco use and ensure that individuals are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit and restrict promotional practices; prevent smuggling of tobacco; provide for regulation of tobacco products to mitigate against the harmful effects of tobacco; and provide for other related matters.

Received and read the

First time.....

Second time.....

Third time.....