

PROCLAMATION No. 143 /2004

A Proclamation to Provide for Tobacco Control

WHEREAS, the use of tobacco products constitutes one of the major public health problems in the world and the growth in smoking and other forms of tobacco consumption by adolescents in Eritrea warrant due attention;

WHEREAS, smoke from tobacco products is a serious health threat to nonsmokers exposed to the smoke, causing serious diseases in adults, and particularly in children;

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

NOW, THEREFORE, it is proclaimed as follows:

Article 1 Short Title

This Proclamation may be cited as the "Proclamation to provide for Tobacco control Proclamation No. 143/2004".

Article 2 Objective

The objective of this Proclamation is to protect the present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a legal framework for tobacco control measures, and reduce significantly tobacco use and its consequent harm by:

- a) protecting children, and other non-smokers from inducements to use tobacco;
- b) protecting non-smokers from exposure to tobacco smoke;
- c) ensuring that the population is adequately informed about the risks of tobacco use and exposure to secondhand tobacco smoke and about the benefits of quitting smoking; and
- d) promoting a climate where non-smoking and the absence of tobacco promotion is the norm.

Article 3. Definitions

In this Proclamation, unless the context otherwise requires:

- (1)"Distribute" means to sell, offer to sell, expose for sale, give, supply, exchange, convey, consign, deliver, furnish, or transfer possession for commercial purposes, or offer to do so, whether for a fee or other consideration or as a sample, gift, prize, or otherwise without charge.
- (2)"Emission" means any substance or combination of substances that is produced as a result of a tobacco product being lighted.
- (3)" Illicit trade" means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct to facilitate such activity.
- (4)"Ministry" means the Ministry of Health or its designate.
- (5)"Minister" means the Minister of health or his or her designate.
- (6)"Minor or underage" means a person under 18 years old.
- (7)"Package" means the container, receptacle or wrapper in which a tobacco product is sold or displayed at retail, including a carton that contains smaller packages.
- (8)"Person" means any physical or juridical person.
- (9)"Public place" means any enclosed location to which the general public is admitted, whether accessible freely, by invitation or against payment.
- (10)"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 directly or indirectly.

- (11) "Tobacco control" means a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke.
- (12) "Tobacco industry" means tobacco manufacturers, wholesale distributors and importers of tobacco products.
- (13) "Tobacco products" means product entirely or partly made of the leaf tobacco . as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing.
- (14) "Tobacco sponsorship" means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.
- (15) "Vending machine" means any means of distribution of tobacco products that is not mediated by a human being.

Article 4. Packaging and labeling of tobacco products

- (1) No person shall manufacture, sell, or import a tobacco product unless the packing and labeling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an enormous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as "Low tar"; "Light", "ultra-light", or "mild" .
- (2) Each unit packet and package of tobacco products and any outside packaging and labeling of such products also carry health warnings describing the harmful effects of tobacco use and may include other appropriate messages. These warnings and messages:
- i. shall be approved by the Ministry; ii.
 - shall be rotating;
 - iii. shall be large, clear, visible and legible;

- iv. should be 50% or more of the principal display areas but shall be no less than 30% of the principal display areas;
 - v. may be in the form of or include pictures or pictograms.
- (3) Each unit packet and package of tobacco products and any outside packaging and labeling of such products shall, in addition to the warnings specified in sub-article 4 of this Article, contain information on relevant constituents and emissions of tobacco products.
 - (4) The warnings and other textual information specified in sub-article 3 and sub-article 5 of this Article will appear on each unit packet and package of tobacco products and any outside packaging and labeling of such products in the English language.
 - (5) Any requirements arising from the preceding sub-articles do not relieve a manufacturer or retailer of other obligations or liabilities arising from other

applicable legal norms to warn consumers of the risks of using tobacco products. (6) For the purposes of this Proclamation, the term "outside packaging and labeling" in relation to tobacco products apply to any packaging and labeling used in the retail sale of the product.

Article 5. Advertising, Promotion and Sponsorship

- (1) No person shall advertise, promote or cause to promote by any other person, a tobacco product through direct or indirect means, including through sponsorship of an organization, service, physical establishment or vehicle of any kind, or event.
- (2) No person shall sell, promote, distribute or cause to be sold, promoted or distributed, any item other than a tobacco product which bears the brand name (alone or in conjunction with any other word), trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of tobacco product.
- (3) No person shall offer or provide any consideration, direct or indirect, for the purchase of a tobacco product, including a gift to a purchaser or a third party,

bonus, premium, cash rebate or right to participate in a game, lottery or contest, or distribute a tobacco product without monetary consideration, or in consideration of the purchase of a product or service or the performance of a service.

Article 6. Distribution

- (1) No person shall sell or offer to sell tobacco to a minor.
- (2) For a liability under sub-article 1 above, it shall not be a defense to allege that the person appeared to have attained majority.
- (3) It shall be a defense, however, under sub-article 1 above that the purchaser presented a prescribed form of identification showing his or her age and that there was no apparent reason to doubt the authenticity of the document or that it was issued to the person producing it.
- (4) No person shall sell or offer to sell tobacco products in a place other than those prescribed by regulation.
- (5) Notwithstanding any regulation made under this Proclamation, no person shall sell or offer to sell tobacco products in the following places:
 - a) health institutions, including hospitals, pharmacies, and health clinics;
 - b) educational institutions, including kindergarten, libraries, primary, secondary, and postsecondary schools;
 - c) facilities with a significant portion of youth clientele, including parks, movie theatres and sports stadia; and
 - d) such other places as may be prescribed by regulations within the spirit of this Proclamation.
- (6) Notwithstanding any provision under this Proclamation, retailers may post signs indicating that tobacco products are available for sale, the specific products or brands available for sale, and their respective prices, provided that brand elements are not visibly displayed.
- (7) No person shall sell or offer to sell a tobacco product by means of a display that permits a person to handle the tobacco product before paying for it.
- (8) No person shall sell or offer to sell tobacco products through a vending machine. (9) No person shall sell or offer to sell tobacco products through the mails or through the Internet.

- (10) No person shall sell or offer to sell tobacco at retail unless signs bearing health warnings and other information are posted at the place in accordance with the regulations.
- (11) No person shall, at any place or premises in which tobacco or tobacco-related products are sold at retail, display any sign respecting the legal age to purchase tobacco or tobacco-related products unless the sign is supplied or approved by the Ministry.

Article 7. Use

- (1) No person shall smoke tobacco or hold lighted tobacco in enclosed, indoor areas of any private or public work place, or any public place.
- (2) For the purpose of this Proclamation, enclosed, indoor areas of any private or public work places and public places shall, inter alia, include the following:
 - a) offices and office buildings including public areas, corridors, eating areas, reception areas, elevators, escalators, foyers, stairwells, rest- rooms amenity areas, laundry rooms and individual offices;
 - b) factories;
 - c) health institutions;
 - d) educational institutions of all levels;
 - e) any premises in which children are cared for;
 - f) any means of transportation used for commercial, public or professional purposes and used by more than one person;
 - g) public transportation terminals;
 - h) retail establishments including shopping malls;
 - i) cinemas;
 - j) concert halls;
 - k) restaurants;
 - l) swimming pool and bingo halls;
 - m) publicly owned facilities rented out for events; and
 - n) any other facilities accessible to the public.

- (3) All private and public workplaces and public places shall post signs, in accordance with regulations, that clearly indicate that the establishment is smoke free except in designated areas.
- (4) Notwithstanding what is provided in the preceding sub-articles, an establishment may designate separate smoking area within an enclosed premise.
- (5) Notwithstanding the provisions of sub-articles (1) and (2), smoking of tobacco products shall be allowed in public places where the primary business of the place is to sell alcoholic beverage to the general public, for consumption on the premises. Such places shall, inter alia, include bars, pubs, night clubs or any other public place where the primary business is the provision of entertainment.

Article 8. Enforcement and Inspection

- (1) For the purpose of this Proclamation the Ministry may appoint any person or designate any class of persons to perform the duties of inspector or analyst. The responsibilities of an inspector shall be specified in the act of appointment.
- (2) Every person authorized as an inspector or analyst under sub-article 1 hereof may, at any reasonable time, to ascertain compliance with this Proclamation and/or any regulations issued hereunder, enter and inspect any of the following places:
 - a) referred to in sub-article 2 of Article 7 above; or
 - b) where tobacco is manufactured, tested, stored, packaged, labeled or sold; or c) where anything used in the manufacture, storage, packing, promotion, sale or testing of tobacco is to be found; or
 - d) where information relating to the manufacture, storage, packaging, labeling, promotion, sale or testing of tobacco is to be found without violating manufacturer's patent rights or trade secrets.
- (3) Authorized inspectors and analysts shall have the following powers, which no person shall deny, obstruct, or hinder:
 - a) to examine, open, and test any equipment, tools, materials, packages or anything the authorized officer reasonably believes is used or capable of

being used for the manufacture, packaging, labeling, storage, distribution, or advertising or promotion, where allowed, of tobacco products.(

- b) to examine any operation or process carried out on the premises;
- c) to examine and make copies of from any books, documents, notes, files, including electronic files, or other records the authorized officer reasonably believes might contain information relevant to determining compliance with regulatory requirements without violating manufacturer's patent rights or trade secrets;
- d) to gather information from any licensee or other person involved in manufacturing, importing, exporting, transporting, packaging, marketing or distributing tobacco products, any owner of the premises, or any person using the premises, and his or her employees, agents, contractors and workers, all of whom shall cooperate fully and truthfully with any inspection or investigation subject to, however, to the privilege against self-incrimination;
- e) to take samples of tobacco products or components of products anywhere they are found and have them tested;
- f) to stop, search, on the basis of a court warrant, and detain any aircraft, ship, vehicle or other means of transport or storage in which the authorized officer reasonably believes tobacco products are contained or conveyed and examine, open, take samples of and have tested any tobacco products or product components found therein; and
- g) to seize and detain, or order the storage without removal or alteration of any tobacco product the inspector reasonably believes does not comply with regulatory requirements, upon providing the licensee or owner of the tobacco products, or if he or she is unavailable, any other person on the premises where the tobacco products are located, written notice of the seizure and detention and the grounds for it. If any tobacco product so seized and detained is determined to meet regulatory requirements, it shall be returned immediately to the premises from which it was seized. If any tobacco product is determined not to meet regulatory requirements, it may be confiscated and destroyed or subjected to other disposal, as ordered by the adjudicator of the case. Any such decision is subject to a judicial review.

- (4) An inspector or analyst entering a place to inspect it under this Article must, on request, provide the operator of the place with proof of identity and produce a certificate or appointment signed by the Minister, or by a person designated in accordance with the regulations.
- (5) An inspector may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued in accordance with the relevant provisions of the Criminal Procedure Code.
- (6) No person shall hinder in any way the performance of the duties of an inspector or analyst, mislead them by concealment or false statements, or refuse to provide them with any information or document to which they are entitled under this Proclamation, or destroy any such information or document.
- (7) During an inspection under this Proclamation, an inspector may seize any tobacco product or other thing by means of which or in relation to which the inspector believes on reasonable grounds that this Proclamation has been contravened.
- (8) Nothing in this Proclamation shall preclude the criminal enforcement of its provisions in a Court of competent jurisdiction.
- (9) Any person found to have violated any requirement under this Proclamation or implementing regulations may be ordered to pay the reasonable costs associated with any inspection, investigation, and enforcement action brought about by the noncompliance.

Article 9. Offences and Punishments

- (1) A manufacturer, importer or a wholesaler found guilty of violating the provisions under Article 4 of this Proclamation shall be liable, upon conviction, to pay a fine not exceeding Nakfa 3000(three thousand Nakfa). In the case of a retailer or other individual, he shall be liable to a fine not exceeding Nakfa 500 (five hundred Nakfa).
- (2) Any person found guilty of violating the provisions of Article 5 of this Proclamation shall be liable, upon conviction, to a fine not exceeding Nakfa 5000 (five thousand Nakfa).
- (3) Any person found guilty of violating any of the provisions of Article 6 of this Proclamation shall be liable, upon conviction, to a fine not exceeding Nakfa 1,000 (one thousand Nakfa).

- (4) Any owner or any other person who derived a right to operate the establishment from him, such as a lessee, of any premise listed under Article 7 of this Proclamation found guilty of failing to enforce the smoke-free policy applicable to the facility under his or her responsibility, including the posting of prescribed signs and ensuring that any designated smoking areas meet the requirements of the Proclamation and its regulations, shall be liable, upon conviction, for a fine not exceeding Nakfa 2000(two thousand Nakfa).Where the failure to enforce the smoke-free policy is the result of an act of a third party as referred to in sub-article 5, which is beyond the owner's, or of any other person who derived a right to operate the establishment from him such as a lessee's reasonable control, he/she shall not be liable.
- (5) Any person found guilty of smoking in a place where smoking is prohibited under Article 7 of this Proclamation shall be liable, upon conviction, for a fine not exceeding 100 Nakfa (one hundred Nakfa).

Article 10. Regulations

The Minister may issue regulations for the implementation of the provisions of this Proclamation.

Article 11 Entry into Force

This Proclamation shall come into force one year following its publication on the Gazette of Eritrean Laws.

Done at Asmara, this 23rd Day of August, 2004.
Government of Eritrea

