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The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 5 of 2017

TOBACCO CONTROL BILL 2017

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A BILL
Intituled

An Act to provide for the adoption and implementation of tobacco control policies in accordance with the World Health Organisation Framework Convention on Tobacco Control which aims to protect present and future generations from the devastating harms of tobacco use and exposure to tobacco smoke; to prevent tobacco use by minors; to protect workers and the public from exposure to tobacco smoke; to prevent exposure of the public, especially minors, to tobacco advertising, promotion and sponsorship; to enhance public awareness of the hazards of tobacco use and exposure to tobacco smoke; to ensure that every person is provided with effective health warnings about the harms of tobacco use and exposure to tobacco smoke; to regulate the tobacco industry, its products and sales; to protect public health policies from the commercial and other vested interests of the tobacco industry; and to provide for other related matters.

A.D. 2017 Enacted by the Parliament of Guyana:-

Short title and
commencement.

1. This Act may be cited as the Tobacco Control Act 2017 and shall come into operation on such date as the Minister may by order appoint.

Interpretation.

2. In this Act –

“authorised officer” means a police officer, customs officer, any inspector or officer employed with the Ministry with responsibility for public health, the Guyana National Bureau of Standards, the Occupational Safety and Health Authority or the Environmental Protection Agency, any other person upon whom any written law vests functions of maintenance of law and order, or any other person authorised by the Minister by notice published in the *Gazette*;

“Chief Medical Officer” means the Chief Medical Officer at the Ministry with responsibility for public health;

“component”, with respect to a tobacco product, means a part of a tobacco product, whether or not sold separately from the tobacco product, such as the paper, filter, plug wrap, or tube in the case of a smoked product, or the portion pouch in the case of a tobacco product that is not smoked; and in relation to an electronic delivery system, component includes the cartridge, atomiser, internal power source, the ‘e-liquid’ solution, and any source of flavourings or other substances;

“Convention” means the World Health Organisation Framework Convention on Tobacco Control, and includes its Protocols and guidelines for implementation;

“Council” means the National Tobacco Control Council established under section 4;

“cross-border” with respect to tobacco advertising, promotion, and sponsorship means that which originates within the territory and enters another territory or could be received in another territory, including by means such as, but not limited to, placement on the internet or through broadcasts or other communication technologies, as well as that which originates outside the territory and enters the territory or could be received within the territory;

“electronic delivery system” refers to both an electronic nicotine delivery system and an electronic non-nicotine

delivery system;

“electronic nicotine delivery system” means an electronically operated product designed to deliver an aerosol to users by heating a solution comprised of nicotine and typically, but not necessarily, propylene glycol and/or glycerol, and often flavouring; and any solution intended for use with or in the product;

“electronic non-nicotine delivery system” means an electronically operated product designed to deliver an aerosol to users by heating a solution of substances that does not contain nicotine; and any solutions intended for use with or in the product;

“Environmental Protection Agency” means the Environmental Protection Agency established under section 3 of the “Environmental Protection Act;

“Government” or “Government authority” includes any government ministry, governmental or semi-governmental or quasi-governmental institution, body, board, commission, committee, work group, or other entity, and includes any entity working on behalf of or to further the interests of government; and where the context requires it, reference to “government” includes natural persons working for or on behalf of the Government, whether elected or appointed;

“Guyana National Bureau of Standards” means the Guyana National Bureau of Standards established under section 3

of the Guyana National Bureau of Standards Act;

“health warnings” means prescribed text and accompanying full colour pictures required to be displayed on tobacco packaging and labelling that convey the health and other consequences of tobacco use and exposure to tobacco smoke;

“indoor” means any space covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for any roof, wall or side, and regardless of whether the structure is permanent or temporary;

“manufacturer” means a person or entity that processes, prepares or packages any tobacco product or electronic delivery system for sale or distribution;

“Minister” means the Minister with responsibility for public health;

“Ministry” means the Ministry with responsibility for public health;

“minor” means any person under the age of eighteen;

“Occupational Safety and Health Authority” means the Occupational Safety and Health Authority established under section 12 (1) of the Occupational Safety and Health Act;

“outdoor” means any space that is not indoor, as that term is

defined in this Act;

“outside packaging and labelling” means packaging and labelling used in the retail sale of the tobacco products or electronic delivery systems;

“person responsible” in relation to any place or vehicle, includes the person who owns, manages, operates, controls or exercises economic power over that place or vehicle; and includes a driver or a conductor of a vehicle used for public transport;

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

“public transport” means any form or mode of transportation, whether publicly or privately owned, used to carry members of the public usually for hire or reward, whether domestically or internationally;

“publish” means to make known publicly by any method or means;

“responsible for tobacco control” or “responsibility for tobacco control” includes being involved in or being in a position to be involved in developing, implementing, or contributing to the development or implementation of tobacco control laws, policies, or other measures.

“seller” means any person who supplies any tobacco product

or electronic delivery system for a fee or other consideration, and includes any distributor, wholesaler, importer, exporter and retailer;

“smoke” means to inhale, exhale, hold or otherwise have control over an ignited tobacco product or a heated, but not ignited, tobacco product that produces an emission of any sort; or to operate or otherwise have control over an electronic delivery system that produces an emission of any sort;

“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;

“tobacco control” means a range of supply, demand and harm reduction strategies that aim to improve the health and welfare of the population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke, including agriculture, tax, price, or trade policies;

“tobacco industry” means a tobacco manufacturer, wholesale distributor or importer of tobacco products.

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

“tobacco smoke” means the smoke emitted from the burning end of a cigarette or other tobacco product usually in

combination with the smoke exhaled by the smoker;

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

“unit package” means any container for retail sale in which cigarettes are directly placed; and

“workplace” means any place used by one or more persons during employment or work, whether done for compensation or as a volunteer, and includes all attached or associated spaces commonly used during the course of work or incidentally, as well as work vehicles.

PART II GENERAL PRINCIPLES

General principles.

3. This Act shall be interpreted in a manner that aligns with the Convention, and in a manner that respects, protects and fulfils the right of every human being to the highest attainable standard of health.

PART III NATIONAL TOBACCO CONTROL COUNCIL

Establishment of the Council.

4. The Minister shall by order establish a National Tobacco Control Council.

Functions of the Council.

5. The Council shall advise the Minister on matters related to tobacco control and the administration and enforcement of this Act.

Appointment of members of the

6. (1) Subject to section 7, the Minister shall appoint each

Council. member of the Council.

(2) Each member of the Council shall be appointed for a term of three years and shall be eligible for re-appointment.

(3) The appointment of each member of the Council and every change of appointment shall be published in the *Gazette*.

Composition of
the Council.

7. (1) The Council shall comprise not more than ten members and shall not include any person affiliated with or having any financial interest in the tobacco industry.

(2) The following public officers shall be members of the Council –

- (a) the Chief Medical Officer, who shall be the Chairperson of the Council;
- (b) the public officer with responsibility for tobacco control at the Ministry, who shall serve as the Secretary of the Council;
- (c) the officer with responsibility for school health at the Ministry of Education; and
- (d) not more than four other senior public officers as the Minister sees fit.

(3) The Minister shall select the remaining persons to be appointed to the Council from among nominees from civil society or non-governmental organisations involved in human rights, public health, consumer protection, workers' rights, youth development, sports or monitoring corruption.

Removal of
member of the
Council.

8. The Minister may remove a member of the Council from office upon being satisfied that the member –

- (a) is, for whatever reason, permanently incapable of performing the functions of a member;
- (b) has been absent, without leave of the Council, from three consecutive meetings of the Council;
- (c) has neglected the duties of a member; or
- (d) has contravened any of the provisions under Part X of this Act.

Secretariat of the
Council.

9. The secretariat of the Council shall be at the headquarters of the Ministry in Georgetown.

Meeting and
procedures of the
Council.

10. (1) The Council shall meet quarterly or more frequently as necessary for the performance of its functions.

(2) Subject to the provisions of this Act, the Council may regulate its own procedures for meetings and any other matter.

(3) The members of the Council shall select from among themselves a Vice-Chairperson.

PART IV ADMINISTRATION, INSPECTION AND ENFORCEMENT

Functions of the
Minister.

11. (1) The Minister shall be responsible for the general administration of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister shall ensure–

- (a) the development and implementation of a national strategy for tobacco control in collaboration with

the Council; and

- (b) the consistent monitoring of activities to ensure compliance with and enforcement of this Act.

Collaboration for tobacco control.

12. All Government authorities shall collaborate as necessary to enforce this Act and implement the tobacco control measures set out in the Convention.

Powers of authorised officers.

13. Authorised officers shall carry out any inspection, investigation or enforcement for the purposes of this Act.

Seized and detained items.

14. (1) Where a customs officer or police officer exercises their legal powers to seize and detain any article reasonably believed not to be compliant with this Act, that article may at the option of that officer be kept or stored in the building or place where it was seized, or may at the direction of that officer be removed to any other proper place.

(2) Where any seized and detained item is reasonably believed not to meet the legal requirements under this Act, it may be confiscated and kept as evidence in legal proceedings.

(3) Where any seized and detained article is determined to meet the legal requirements under the Act, it shall be returned to the premises from which it was seized within one week.

(4) Any person without lawful authority who removes, alters or interferes in any way with any article ordered to be stored under this Act commits an offence and is liable on summary conviction to a fine of four hundred thousand dollars and imprisonment for six months.

Duty to cooperate
with authorised
officers.

15. (1) The person responsible for any place or vehicle entered into by an authorised officer for the purposes of enforcing this Act, and every person found therein, shall give the authorised officer all reasonable assistance within his or her power and furnish the authorised officer with such information as the authorised officer may reasonably require.

(2) Any person who –

- (a) fails to comply with subsection (1);
- (b) denies, obstructs or hinders an authorised officer in carrying out of the authorised officer's duties under this Act; or
- (c) knowingly makes any false or misleading statement, verbally or in writing, or refuses to provide requested information to an authorised officer,

commits an offence and is liable on summary conviction to a fine of four hundred thousand dollars and imprisonment for six months.

PART V PROTECTION FROM EXPOSURE TO SECOND-HAND SMOKE

Places where
smoking
prohibited.

16. (1) No person shall smoke in the following places –

- (a) in any part of any indoor workplace;
- (b) in any part of any indoor public place, including by way of illustration but in no way limited to those places listed in the First Schedule;
- (c) in or on any means of public transport, whether or not it is carrying a member of the public; or
- (d) in or on any means of transport at the time transporting a minor.

First Schedule.

- (2) No person shall smoke in the following outdoor places --
- (a) any area within five metres from a window of, ventilation inlet of, or doorway to any indoor public place or indoor workplace;
 - (b) anywhere on the premises of and within five metres from the outside boundaries of any health care, educational or child care facility;
 - (c) any waiting area or queue in a public place, including but not limited to any public transport stop, bus stand or bus park;
 - (d) any park, playground or amusement park;
 - (e) any stadium, arena, or other kind of sport or performance space;
 - (f) any gazetted site of historic or national significance;
 - (g) any space for the commercial service of food or drink; or
 - (h) any other outdoor place prescribed by regulations.

(3) Any person who smokes in any place where smoking is prohibited commits an offence and is liable on summary conviction to a fine of ten thousand dollars for the first offence, and twenty thousand dollars for any second or subsequent offence.

Duties of person responsible.

17. (1) A person responsible for any vehicle, workplace or public place where smoking is prohibited shall --
- (a) not permit any person to smoke there;
 - (b) prominently post and maintain signs in the manner and form prescribed by regulations;
 - (c) remove all ashtrays from any area where smoking is prohibited;

- (d) supervise observance of the smoking ban;
- (e) take reasonable steps to discourage or stop any person from smoking where it is prohibited, including denying service or transport to any person who refuses to discontinue smoking, or contacting law enforcement where necessary; and
- (f) investigate complaints and take reasonable action.

(2) All prohibitions and duties under this section shall apply with respect to the use of electronic delivery systems and any other product that produces an aerosol that could be confused with tobacco smoke or that simulates smoking.

(3) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of four hundred thousand dollars and imprisonment for six months.

No smoking signs.

18. The Minister may make regulations prescribing the design, content, format, placement and any other matter related to ‘no smoking’ signs.

PART VI ADVERTISING, PROMOTION AND SPONSORSHIP

Ban on tobacco advertising, promotion and sponsorship.

19. (1) All advertising, promotion and sponsorship of tobacco products and electronic delivery systems are prohibited.

(2) Without prejudice to the generality of the subsection (1), no person shall –

- (a) initiate any tobacco advertising, promotion, or sponsorship;
- (b) produce or place any tobacco advertising,

- promotion, or sponsorship content;
- (c) display any tobacco advertising, promotion, or sponsorship content, including tobacco product display at retail points of sale;
 - (d) disseminate, when the person is aware of or is in a reasonable position to become aware of, any tobacco advertising, promotion, or sponsorship content; or
 - (e) engage or participate in any tobacco advertising, promotion or sponsorship as a media or event organiser, celebrity or other participant, or as a recipient of any sponsorship contribution or intermediary that facilitates any such contribution.

(3) The prohibition in subsection (1) includes any tobacco advertising, promotion, and sponsorship that promote or are likely to promote the tobacco industry, directly or indirectly.

(4) Where any person who has management or control over the publication or dissemination of content through analogue or digital media or communications becomes, or reasonably should be, aware of any prohibited content, that person shall remove or disable access to the prohibited content.

(5) This section applies to all domestic and cross-border tobacco advertising, promotion, and sponsorship.

(6) The prohibition on tobacco advertising, promotion and sponsorship does not apply to the following –

- (a) a price list made available by a tobacco product

- retailer in compliance with section 35;
- (b) depictions of tobacco products or tobacco use in media where the depiction is purely incidental or is justified by reasons of historical accuracy or legitimate journalistic, artistic or academic expression;
 - (c) political, social, or scientific commentary about tobacco products or tobacco use;
 - (d) reporting of information that is necessary for business administration or for required corporate reporting;
 - (e) product information made accessible to persons within the tobacco industry who need the information for trading decisions, and only to the extent access is limited to those persons; and
 - (f) a tobacco manufacturer's newsletter destined exclusively for the manufacturer's employees, contractors, suppliers and business partners, and only to the extent access is limited to those persons.

(7) No person shall employ any means with respect to any of the items listed in subsection (6) that are false, misleading, deceptive, or likely to create an erroneous impression about a tobacco product's characteristics, health effects, hazards, or emissions.

(8) No person shall receive any payment or other consideration from the tobacco industry, or any person acting on behalf of or in the interest of the tobacco industry, with respect to any activity under subsections (6) (b) and (c).

(9) The Minister may prescribe by regulations any additional requirements, conditions, and restrictions in relation to subsection (6).

(10) All prohibitions and duties under this section shall apply to advertising, promotion and sponsorship with respect to electronic delivery systems.

(11) Any person who contravenes this section commits an offence and is liable on summary conviction to a fine of nine million dollars and imprisonment for twelve months:

Provided that for any recipient of a prohibited sponsorship contribution, or intermediary that facilitates any such contribution, a fine of one hundred thousand dollars and forfeiture of the sum received as contribution.

Second Schedule.

20. (1) Without limiting in any way the broad application of section 19, the Second Schedule provides a non-exhaustive list of examples, for illustrative purposes only, of prohibited tobacco advertising, promotion, and sponsorship.

(2) The Minister may make regulations to expand the non-exhaustive list of examples of tobacco advertising, promotion and sponsorship in the Second Schedule.

Reporting by tobacco industry on advertising, promotion and sponsorship.

21. (1) For the purpose of compliance monitoring under this Part, manufacturers, wholesale distributors and importers of tobacco products or electronic delivery systems shall provide to the Minister in the time and manner prescribed by regulations, a report on any advertising, promotion and sponsorship undertaken during the reporting period.

(2) A manufacturer, wholesale distributor or importer of tobacco products or electronic delivery systems who refuses to submit a report as prescribed under this section commits an offence

and is liable on summary conviction to a fine of two million dollars and imprisonment for six months.

PART VII PACKAGING AND LABELLING

Packaging and
labelling
requirements.

22. (1) Prescribed rotating pictorial and text health warnings shall be permanently displayed on a minimum of sixty percent of the top portion of each principal display area of any tobacco product's outside packaging and labelling in accordance with the requirements of this Act.

(2) All text health warnings or other information prescribed to be displayed on a tobacco product's packaging and labelling shall be in English.

(3) Only where prescribed shall descriptive information on constituents and emissions be provided on the unit package and outside packaging and labelling of any tobacco product.

(4) The unit package and outside packaging and labelling of a tobacco product shall not contain emission yield figure or any statement or sign that might imply that one product or brand is less harmful than another.

(5) The unit package and outside packaging and labelling, and the design and appearance of any tobacco product shall not promote that product by any means that are false, misleading, deceptive or likely to create an erroneous impression about the product's characteristics, health effects, hazards or emissions, including using –

(a) any term, descriptor, trademark, figurative, colour, number, or other sign of any kind that directly or

indirectly creates or is likely to create the false impression that a particular tobacco product is less harmful than another; including terms such as, but not limited to, “low tar”, “light”, “ultra-light” or “mild”, “smooth”, “natural”, “fine”, “extra fine”, “extra”, “ultra”;
or

(b) any other terms in any language, or signs suggesting or likely to suggest the terms in paragraph (a) or that are otherwise likely to mislead consumers, including when used as part of a brand name or trademark.

(6) Normal opening of the package must not damage, conceal, obscure, disrupt, or otherwise hamper the visibility of health warnings, and health warnings must not be damaged, concealed, obstructed, obscured, or disrupted by other required packaging and labelling markings, by any package design feature or mechanism, or by anything provided by the manufacturer or seller:

Provided that in the case of flip-top packs, the warnings may be temporarily separated upon opening in the case of flip top packs, unless otherwise prescribed by the Minister in regulations.

(7) The retail packaging of a tobacco product shall not include any features designed to change the packaging after retail sale, including but not limited to –

- (a) heat activated inks;
- (b) inks or embellishments designed to appear gradually over time;
- (c) inks that appear fluorescent in certain light;
- (d) panels designed to be scratched or rubbed to

reveal an image or text;

(e) removable tabs; or

(f) fold-out panels.

(8) Manufacturers, importers and distributors shall design their tobacco products' packaging and labelling in a manner to make them tamper-proof, using the best available technology.

(9) All prescribed health warnings and any other information required under this Part for the packaging and labelling of any tobacco product or electronic delivery system shall be reproduced by electronic imaging derived from the original images of the samples provided by the Minister, and shall be displayed on packaging and labelling with the same quality and clarity.

Minimum quantity requirements for packages of tobacco products.

23. (1) All cigarettes shall be sold in an intact package containing not less than twenty sticks or individual units per package.

(2) Any smokeless tobacco product or loose tobacco shall be sold in an intact package containing not less than twenty grammes of the product.

Regulations for packaging and labelling.

24. (1) The Minister shall have the authority to prescribe by regulations, the content, colour, size, font, print quality, layout, design, placement, display, rotation requirements, and all other implementing details related to the health warnings and any other information required to be displayed on any tobacco product's unit package and outside packaging and labelling.

(2) The Minister shall have the authority to prescribe by regulations the requirements for the packaging and labelling of

electronic delivery systems and components, including but not limited to –

- (a) requirements for the display of any warnings and specified product information, including contents and emissions;
- (b) prohibitions on misleading packaging and labelling;
- (c) prohibitions or restrictions on promotional features of packaging and labelling; and
- (d) minimum quantity requirements for package contents.

(3) The Minister is authorised to provide to the tobacco industry and any manufacturer, wholesale distributor or importer of electronic delivery systems, electronic samples of the health warnings and any other information required under this Part for the packaging and labelling of any tobacco product or electronic delivery system.

Time for
compliance.

25. (1) After nine months from the date of the entry into force of this Act, no person shall manufacture, import, distribute, sell or offer for sale any tobacco product or electronic delivery system, other than a tobacco product or electronic delivery system contained in intact packages that meet the packaging and labelling requirements under this Act.

(2) Where the Minister makes new regulations in relation to packaging and labelling, after nine months from the date of entry into force of the regulations, no person shall manufacture, import, distribute, sell or offer for sale any tobacco product or electronic delivery system, other than a tobacco product or electronic delivery

system contained in intact packages that meet the packaging and labelling requirements under this Act and the new regulations.

(3) Any person who contravenes any provision of this section commits an offence and is liable on summary conviction to a fine of nine million dollars and imprisonment for twelve months.

Submission of
package samples.

26. (1) The Minister may, for the purpose of monitoring compliance with this Act, require manufacturers, wholesale distributors and importers of tobacco products or electronic delivery systems to submit samples of all packaging and labelling used for the unit package and outside packaging and labelling for each brand family and each brand within the brand family for each package size.

Offences under
this PART.

(2) A manufacturer, wholesale distributor or importer who refuses to submit samples of packaging and labelling required under this section commits an offence and is liable on summary conviction to a fine of two million dollars and imprisonment for six months.

PART VIII SALES REQUIREMENTS

Prohibition on
sales to minors.

27. (1) No person shall sell a tobacco product, electronic delivery system, or component to a minor.

(2) Prior to the retail sale of any tobacco product or electronic delivery system, or component, the seller shall verify the age of the purchaser by checking the purchaser's national identification card, passport or driver's licence.

Prohibition on
sales by minors.

28. No person shall employ a minor to sell or handle a tobacco product, electronic delivery system, or component.

Prohibition on self-service displays.

29. No person shall sell a tobacco product, electronic delivery system, or component by any means by which the product may be handled directly by the consumer prior to the sale.

Seller and purchaser to be in same location.

30. (1) No person shall sell a tobacco product or electronic delivery system to any person over the telephone, internet, through the mail or by any other means where the retailer and purchaser are not in the same physical location.

(2) No person shall arrange or facilitate any sale prohibited in this section, including but not limited to facilitating payment and delivery services for the products, if the subject of the payment or delivery is known or reasonably ought to have been known.

Prohibition on vending machine sales.

31. (1) No person shall sell or display a tobacco product or electronic delivery system, or component through an automatic vending machine.

(2) A vending machine containing any tobacco product, electronic delivery system, or component shall be subject to confiscation along with any products contained therein.

Prohibition on carrying-tray sales.

32. No person shall go into any public place carrying any tobacco product, electronic delivery system, or component, in a tray, container or otherwise for the purpose of making sales or commercially displaying the product.

Prohibition on toy and candy tobacco products.

33. No person shall import, manufacture, sell, display for sale, or supply any sweet, snack, toy, or other non-tobacco item or object in the form of a tobacco product or which imitates or suggests the

appearance of a tobacco product in whole or in part.

Prohibition on sales in certain places.

34. No person shall sell any tobacco product, electronic delivery system, or component anywhere on the premises of the following places –

- (a) facilities where health care services are provided;
- (b) sports, athletic or recreational facilities;
- (c) government buildings;
- (d) educational facilities; or
- (e) any other place prescribed by regulations.

Price lists.

35. (1) No person shall make a price list for any tobacco product, electronic delivery system, or component available to any customer at a retail point of sale, unless the price listed is requested by the customer.

(2) A price list for under subsection (1) shall contain only –

- (a) plain black and white text;
- (b) the product brand name, package quantity or price; and
- (c) any warning or information for price lists prescribed by regulations.

Minister may prescribe additional prohibitions, etc.

36. The Minister may prescribe additional prohibitions, restrictions, and requirements related to the sale of tobacco products, electronic delivery systems, or components.

Offences under this Part.

37. (1) Any person who contravenes any provision of sections 27, 28, 29, 30, 31, 32, 33, 34 and 35 commits an offence and is liable on summary conviction to a fine of four hundred thousand dollars and imprisonment for six months.

(2) It shall be a defence under sections 27 and 28, for a seller or employer to prove that they diligently verified the purchaser or employee's age and did not know, or reasonably could not have known, that the purchaser or employee was a minor.

PART IX
REGULATION AND REPORTING OF THE TOBACCO
INDUSTRY

Tobacco industry reporting on advocacy and financial contributions.

38. (1) Every manufacturer, importer, or wholesale distributor of a tobacco product or electronic nicotine delivery system shall submit to the Minister periodically or upon request, reports containing, for the period covered by the report, the following –

- (a) revenues and profits, broken down by region and sector and by wholesaler and retailer;
- (b) location, address and corporate name of all tobacco and non-tobacco subsidiaries, affiliates, joint ventures, partners, suppliers, and licensees;
- (c) litigation in which the corporation or a subsidiary is a party;
- (d) any and all legal violations committed or prosecuted against the corporation, or any of its officers in relation to tobacco control;
- (e) corporate taxes owed and paid;
- (f) market share for all brands and brand families in all markets in the territory and globally;
- (g) information on tobacco product and electronic delivery systems imports and exports as specified in regulations, and import and export partners and locations;

- (h) all activities attempted or undertaken to influence the formulation or implementation of any tobacco control measure;
 - (i) the identification of lobbyists and lobbying firms and all other persons used for the purpose of taking or attempting action to influence the formulation or implementation of any tobacco control measure, or any issue relevant or related to tobacco control including advocacy and advertising, along with an itemisation of all costs incurred and payments made in regard to these activities;
 - (j) membership in any trade or business association, payments made to any trade or business association, and the purpose of any such payment;
 - (k) any payment directly or indirectly provided to scientists, researchers, journalists, and any other person as may be specified in regulations, and the purpose and date of any such payment;
 - (l) any payment, gift, contribution of any kind, or perquisite made or given directly or indirectly to any person working for or on behalf of the Government, whether or not the person has responsibility for tobacco control;
 - (m) any contribution or payment of any kind to any Government entity, whether or not it has responsibility for tobacco control;
 - (n) any contact initiated and any interaction with the Government or any Member of Parliament; and
 - (o) any other information prescribed by regulations.
- (2) The chief operating officer, chairperson or any other

person in charge of the entity submitting the report shall, under penalty of perjury, verify and attest to the truthfulness, accuracy, and completeness of all of the information reported.

(3) The report shall be submitted at the frequency and in the form and manner prescribed by regulations.

(4) The Minister shall maintain the reports for a period of at least five years and shall make information from the reports readily available to the public while taking reasonable steps to prevent disclosure of any information that may be misleading or promotes the tobacco business or its products, or that may disclose trade secrets of a business.

Product content
and emissions
testing and
reporting.

39. (1) The Minister may make regulations for testing and measuring the contents and emissions of any tobacco product, electronic delivery system, or component, and for reporting to the Minister in this regard.

(2) Where the Minister makes regulations pursuant to subsection (1), no person shall manufacture, import, sell or offer for sale, any tobacco product, electronic delivery system, or component that contravenes the regulations.

(3) Where the Minister makes regulations pursuant to subsection (1) requiring the submission of any report, the report shall be submitted in the manner and at the frequency prescribed, and attested by the person submitting the report as to its truthfulness, accuracy, and completeness.

PART X
PROTECTION OF TOBACCO CONTROL POLICIES FROM
THE TOBACCO INDUSTRY

Duty of the Government to prevent tobacco industry interference.

40. The Government shall take all steps necessary to protect tobacco control policies and measures from any real or perceived influence from or interference by the commercial and other vested interests of the tobacco industry.

Interaction between Government and the tobacco industry.

41. (1) A person, body or entity that contributes to or may contribute to the formulation, implementation, administration, enforcement or monitoring of public health policies for tobacco control shall not interact with the tobacco industry except where it is strictly necessary for the effective regulation of the tobacco industry or a tobacco product.

(2) Where there is any interaction between the Government and the tobacco industry, the Government shall ensure full accountability and transparency of the interaction, including where possible, public participation in or public record of such interaction.

Prohibition on partnerships and endorsements from the tobacco industry.

42. A person, body or entity that contributes to or may contribute to the formulation, implementation, administration, enforcement or monitoring of public health policies for tobacco control shall not participate in, support, endorse or accept –

- (a) any proposed policy, legal or other measure relevant or related to tobacco control drafted by, in collaboration with, or with assistance from, the tobacco industry;
- (b) any seminar, conference, training, or other event organised or sponsored by, or with any kind of contribution from the tobacco industry;
- (c) any partnership with the tobacco industry;

- (d) any direct or indirect voluntary offer or provision of any payment, contribution, service, gift, or perquisite of any kind by the tobacco industry, unless such payment contribution or service is legally mandated or results from legal action; or
- (e) any direct or indirect involvement by or contribution from the tobacco industry in any tobacco control or public health initiative, including but not limited to any youth, public education or similar initiative unless such financial contribution results from legal action.

Prohibition on voluntary contributions from the tobacco industry.

43. A person, body or entity that contributes to or may contribute to the formulation, implementation, administration, enforcement or monitoring of public health policies for tobacco control shall not solicit or accept contributions from the tobacco industry.

Conflict of interest in employment.

44. (1)The Government shall require any person applying for, or under consideration for employment, contract or voluntary work, related to tobacco control to disclose any related conflict of interest which may include but not necessarily be limited to –

- (a) ownership of any stock holdings or other financial interest in a business in the tobacco industry;
- (b) any occupational activity, whether or not for compensation, with the tobacco industry, including serving as a member of a board of directors during the five year period prior to the date of the application for employment or work; or
- (c) any other conflict of interest as may be specified in regulations or government policy.

(2) Any person applying or under consideration for employment, contract or voluntary work with the Government

related to tobacco control shall truthfully and fully respond to any request for disclosure of a conflict of interest pursuant to subsection (1).

(3) No government entity shall hire or engage any person to work or serve in any capacity with responsibility for tobacco control where that person currently has or had a conflict as described in subsection (1) during the five year period prior to the date of the application for employment or work.

(4) Any person in government service with responsibility for tobacco control shall make full and immediate disclosure of any conflict as described in subsection (1) that may arise during their service, take immediate action necessary to resolve any conflict, and disclose the conflict to the Minister no later than three business days from the date the conflict arose or was discovered by the person having the conflict.

(5) No government entity shall allow a person with a conflict as described in subsection (1) to serve on the Council, any board, commission, work group, delegation or other organ having responsibility for tobacco control, or participate in any of its activities.

(6) Any person who fails to disclose a conflict of interest under this section commits an offence and is liable on summary conviction to a fine of four hundred thousand dollars, and appropriate disciplinary action or contract termination in the case of a contractor, in addition to any other penalty that may apply.

PART XI
CORRECTIVE ACTION AND ADDITIONAL PROVISIONS
FOR PENALTIES

Additional penalties.

45. Any person who contravenes any of the provisions of this Act for which there is no penalty prescribed, commits an offence and is liable on summary conviction to a fine of nine million dollars and imprisonment for twelve months.

(2) In addition to any penalty authorised under this Act, the court may order corrective action, with the cost of the action borne or reimbursed by the defendant, including but not limited to –

- (a) public notification of the offence;
- (b) an order to cease and desist from any conduct that contravenes any provision of the Act;
- (c) where applicable, removal or blockage of tobacco advertising, promotion, or sponsorship;
- (d) invalidation of any contract, agreement, or arrangement for tobacco advertising, promotion, or sponsorship;
- (e) forfeiture of any prohibited contribution;
- (f) recall, removal or confiscation and destruction of any product, item, or material that fails to comply with the requirements of this Act or that are prohibited under the Act, or that are used to facilitate an offence under this Act;
- (g) removal, confiscation and forfeiture of any equipment, machinery, raw material, component, packaging and labelling material or any other item used to manufacture or package any non-compliant tobacco product; or

- (h) removal, confiscation and forfeiture of any illicit tobacco products;
- (i) suspension or revocation of a business or trade licence; or
- (j) any other corrective action.

(3) Each day an offence continues shall constitute a separate offence.

(4) Where any person derives any monetary or financial benefit directly or indirectly from any act or omission that constitutes an offence under this Act or any other applicable law, including non-payment of duties and taxes, all proceeds so gained shall be forfeited in addition to any other penalty imposed.

(5) Where a corporation, partnership firm, or other entity contravenes any provision of this Act, any manager, director or any other officer who authorised or acquiesced in the act or who knew or using due diligence ought to have known of the commission or omission, shall be deemed to have committed the offence and shall be held liable for all costs and fines associated with any enforcement or corrective action and for any term of imprisonment ordered.

PART XII MISCELLANEOUS

Regulations.

46. In addition to any specific power conferred on the Minister to make regulations, the Minister may make regulations as necessary for the effective administration of this Act.

FIRST SCHEDULE**(section 16)**

Examples of Indoor Public Places and Work Places where Smoking is Prohibited –

1. Health care institutions and facilities.
2. Educational institutions of all levels.
3. Child care facilities.
4. Retail establishments, including stalls, stores, shops, and shopping malls.
5. Hotels and other places of lodging.
6. Restaurants, bars, pubs, cafes, and other eating or drinking establishments.
7. Gaming machine venues and casinos.
8. Entertainment facilities including clubs, cinemas, concert halls, theatres game arcades, pool and bingo halls.
9. Publicly owned facilities rented out for events.
10. Any other indoor premises accessible to the public and any indoor workplace.

SECOND SCHEDULE**(section 20)****Indicative List of the Forms, Media, and Means of Tobacco Advertising, Promotion, and Sponsorship Prohibited Under the Act.**

1. Examples of prohibited forms of tobacco advertising, promotion, and sponsorship include -
 - a. Communication through audio, visual or audio-visual means, such as print (for example, newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs), television and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (such as computer games, video games or online games), other digital communication platforms (such as the Internet and mobile phones) and theatre or other live performance;
 - b. Brand-marking, including in entertainment venues and retail outlets and on vehicles and equipment, such as by use of use of words, designs, images, sounds and colours, including brand names, trademarks, logos, names of tobacco product manufacturers or sellers, and colours or schemes of colours, in whole or part, and any other indicia associated with tobacco products, tobacco product manufacturers or sellers;
 - c. Product diversification through brand stretching, reverse brand-stretching and brand sharing, which would include placement of indicia associated or likely to be associated with a tobacco product or tobacco

- product manufacturer or seller on a non-tobacco product, item or service; and placement of any logo, slogan, trademark or brand name of a non-tobacco product or service on a tobacco product;
- d. Product placement, such as the inclusion of, or reference to a tobacco product, service or trademark in the context of communication in return for payment or other consideration;
 - e. Provision or offer of prizes, gifts or discounted products, such as footwear, clothing and accessories (t-shirts, baseball hats etc.), key rings, cigarette lighters, CDs, other trinkets, or tobacco products, with the purchase of tobacco products;
 - f. Supply or offer of free samples of tobacco products, including in conjunction with marketing surveys and taste testing;
 - g. Incentives, promotions or loyalty schemes, such as redeemable coupons provided with purchase of tobacco products;
 - h. Competitions associated with tobacco products or brand names, whether requiring the purchase of a tobacco product or not;
 - i. Direct targeting of individuals with promotional, including informational, material, such as direct mail, telemarketing, consumer surveys or research, or

- person- to- person conversation;
- j. Promotion of discounted products;
 - k. Payments or other contributions to retailers to encourage or induce them to sell tobacco products, including retailer incentive programmes, such as rewards to retailers for achieving certain sales volumes;
 - l. Payment or other consideration for the exclusive sale or prominent display of a particular product or manufacturer's product in a retail outlet or at a venue or event;
 - m. Provision of financial or other support to events, activities, individuals or groups, such as sporting or arts events, individual sports persons or teams, individual artists or artistic groups, welfare and other public interest organisations, Government institutions or organisations, politicians, and political candidates or political parties, whether or not in exchange for attribution, acknowledgement, or publicity, including corporate social responsibility activities of any kind;
 - n. Provision of financial or other support to venue operators, such as bars, clubs or other recreational venues, in exchange for building or renovating or decorating premises to promote tobacco products or the use or provision of awnings, sunshades, and similar items;

- o. Sale of tobacco products with other products either packed together with a product that is not a tobacco product; or distributed or supplied together with a product that is not a tobacco product, at a single price;
- o. Commercial display of tobacco products at retail and vending machine sales;
- p. Sale of tobacco products through the internet; and
- q. Any other form of tobacco advertising, promotion or sponsorship by any method or means.

2. The forms, methods and means of advertising, promotion and sponsorship provided in the above list also apply to electronic delivery systems.

EXPLANATORY MEMORANDUM

The purpose of the Tobacco Control Act 2016 is to fight the tobacco epidemic by implementing the evidence-based requirements of the World Health Organisation's Framework Convention on Tobacco Control (WHO FCTC), to which Guyana acceded on 15 September 2005.

Clauses 1 and 2 provide for the short title, commencement, and interpretation of the Act.

Clause 4 seeks to establish a National Tobacco Control Council.

Clause 11 proposes to empower the Minister of Public Health with responsibility for administration of the Act.

Clause 13 sets out the enforcement powers of authorised officers.

Clause 16 seeks to ban smoking in all indoor public places, indoor workplaces, public transport, and in certain specified outdoor places, in order to protect the public from exposure to second-hand smoke.

Clause 17 seeks to set out the duties of the person responsible for places and vehicles where smoking is prohibited.

Clause 19 recognises that tobacco advertising, promotion and sponsorship (TAPS) is the driver of the tobacco epidemic, and seeks to impose a complete ban on TAPS.

Clause 21 seeks to monitor compliance with the ban on tobacco advertising, promotion and sponsorship by placing a duty on the tobacco industry to report tobacco advertising, promotion and sponsorship activity.

Clause 22 seeks to declare the rights of all consumers to be fully informed of the risks of tobacco use and exposure to tobacco smoke, by requiring that fifty percent of tobacco product packaging and labelling display prescribed pictorial and text health warnings.

Clause 23 seeks to provide the minimum quantity requirements for

smoked and smokeless or loose tobacco product per package.

Clauses 27 and 28 seek to ban the sale of tobacco products to and by minors.

Clauses 29, 30, 31, 32 and 33 seek to limit the access by minors to tobacco products by, among other things, ensuring sale of tobacco products only takes place in circumstances where the age of the purchaser can be verified, and banning the sale of toy tobacco products.

Clause 34 seeks to prohibit the sale of tobacco products in certain places, for example, health-care and educational facilities.

Clause 39 seeks to empower the Minister to make regulations for the testing and reporting of the contents and emissions of any tobacco product or electronic delivery system.

Clause 41 seeks to regulate interaction between Government and the tobacco industry so as to protect public health policies from the commercial interests of the tobacco industry.

Clause 42 seeks to prohibit partnerships and endorsements from the tobacco industry to the Government.

Clause 44 seeks to protect public health from infiltration by the tobacco industry by requiring disclosure of any conflict of interest by persons seeking employment in tobacco control.

Clause 45 seeks to prescribe penalties to be imposed in addition to, where required, those already specified for the offence, or where no specific penalty has been stated for an offence under the Act.

Clause 46 seeks to empower the Minister of Public Health to make regulations as necessary for the effective implementation of this Act.

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Hon. Volda Lawrence, M.P.
Minister of Public Health