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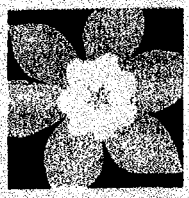
Loi sur le tabac

Compilation de preuves traitant des effets de la publicité et de la promotion concernant le tabac, incluant les étalages au point de vente

Mémoire présenté à la Commission des affaires sociales, Assemblée nationale du Québec, pour l'étude du projet de loi 112, *Loi modifiant la Loi sur le tabac et d'autres dispositions législatives*



Canadian Cancer Society
Société canadienne du cancer

mai 2005

Volume 4

Société canadienne du cancer (2005), "Compilation de preuves traitant des effets de la publicité et de la promotion concernant le tabac, incluant les étalages au point de vente : Mémoire présenté à la Commission des affaires sociales, Assemblée nationale du Québec, pour l'étude du projet de loi 112, *Loi modifiant la Loi sur le tabac et d'autres dispositions législatives*"

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Rethinking Cigarette Packs For a New Age

As advertising restrictions put more emphasis on packaging to sell the product, paperboard manufacturers must keep in mind the traditional demand for quality in the cigarette industry—the package is expected to be pure and odor-free, elastic, bright, and white. Add to this the growing environmental concerns of the 90s—are the forests, the primary source of raw materials for the paper industry, a renewable source?—and it is clear that paperboard manufacturers have to develop a new product to supply to the changing demand.

TI STAFF REPORT

More and more prohibitions are restricting the cigarette market. In most countries, the marketing of cigarettes is being limited by increasingly stricter legislation. In some markets, further restrictions are being discussed in the form of a total prohibition on cigarette and tobacco advertising.

The cigarette pack: an important message carrier

At the same time, smokers are loyal to their brand and are not likely to switch from the brand or flavor they prefer. Against this background, it may seem impossible to make new inroads in the market, or to launch new brands and win customers away from a competing brand.

Nevertheless, market competition is more intensive than ever. In this struggle to win over smokers, the pack and its message have become increasingly important weapons.

Niches for the future

Thus, smokers in the future will be able to choose among more and more brands, most of them more exclusive than the cigarettes we smoke today. If we study the reports from various trend institutes about how the 90s will look, most of them agree that we are going to become more quality-conscious. We will buy and consume less. Instead, we will set a higher standard of quality for the things we buy.

At the same time there are more exclusive brands, shorter runs, and more niches to be covered, advertising will be restricted or even prohibited in the form of newspaper and magazine advertisements, billboards, TV commercials, etc. This will make the pack itself an important advertising medium. The role of the cigarette pack as the creator and bearer of an image will be more significant than ever.

The pack carries the message

During the 90s, the traditional cigarette pack will not be good enough for the selling job it will have to do. If it cannot be shown and marketed in advertising as before, it must carry the whole message itself. And when more and more popular brands vie for space on the tobacconist's shelves, the demand for a design that sells will be greater than ever before.

Manufacturing requirements

The investment in industrial production and machines is so big that the main goal will always be maximum cost-effectiveness. In addition to making demands on the design of the pack, one must also demand a high standard of runnability.

Creasability is of major importance. The board must permit deep, lasting creases. Relatively small packs must allow a great number of creases without risking surface cracks, which would spoil the printing. This means that the different layers of the paperboard must be bonded internally so that delamination—splitting between the different layers—will be the same from one crease to the next. This will assure exact corners, without any irregularities.

Creasability is also important for the final finish of the pack, and for its runnability in the machines. Speeds are high in industry today: over 8,000 folds a minute is normal.

Flatness is another basic demand. When the converted paperboard reaches the cigarette company, it has already gone through several presses which punch and crease it. But it must still be flat. The machines can compensate for minor deviations, but the possibilities are limited.

Stiffness is important for good runnability. The stiffness of the paperboard is related to both the type of fibers and the weight. Runnability requires stiffness both along and across the direction of the fibers.

The level of dust must be low to avoid machine stoppage. Otherwise fiber dust will settle on the glue applicators and force the machine into down time for cleaning.

The coating is also important. It must allow one the reproduction of

Sophisticated Cigarette Packets Demonstrate Paperboard Possibilities

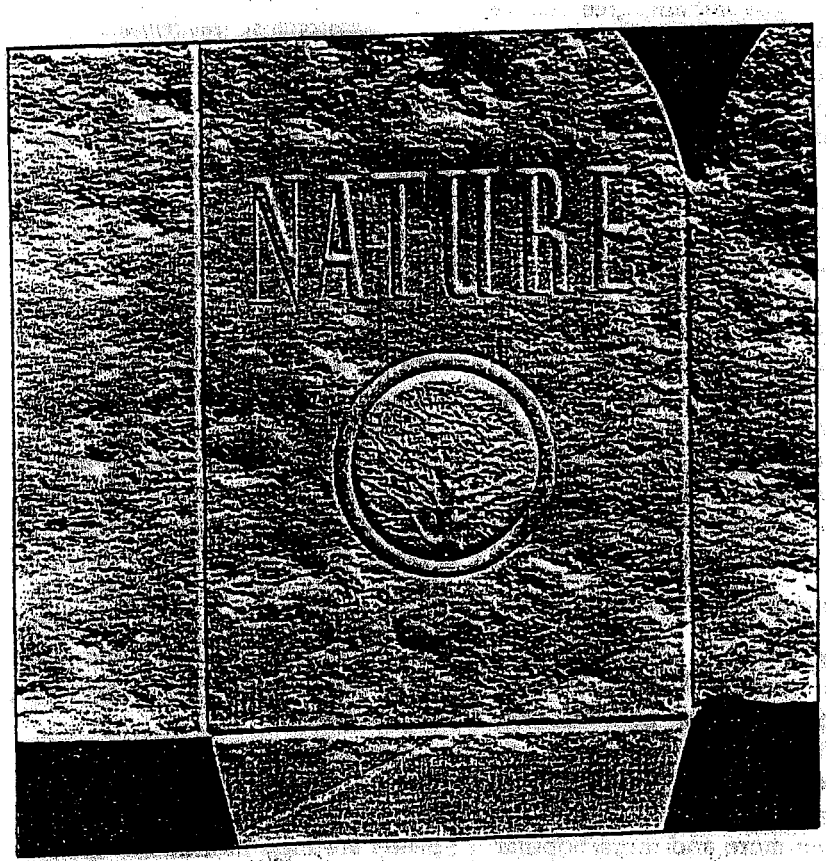
Iggesund Paperboard AB in Sweden has produced an advanced demonstration cigarette pack. The company's standard paperboard for cigarette packets, Invercote, has been the base for a project involving Iggesund, Peter Schmidt Studios in Hamburg, and the packaging specialists Carl Edelmann GmbH in Heidenheim, Germany. The result is a cigarette packet in which the paperboard's own features have been optimized and a number of new possibilities in design and technique have been utilized.

Natural stone was chosen as the motif. The rough surface and complex pattern of colors and gleam were to be reproduced in the packet.

Embossing tools were designed with stone as a model. The paperboard was subjected to a pressure of more than 100 metric tons. Invercote's chemical pulp fibers allowed the board to be treated like aluminum sheet. Despite "mistreatment" the coating remains unchanged, the fibers are intact, and the embossing is permanent.

To imitate the pattern of stone, six-color printing was used in a combination of offset and photogravure. The printed message was offset, and the special gleam effects of granite were applied in photogravure.

The Nature pack is opened in an unconventional way. Here, too, advantage has been taken of the paperboard's toughness and shapability.



New opportunities

With this new package, Iggesund wanted to show that its standard Invercote paperboard has qualities that allow much bolder shapes and designs than conventional boards. At the same time, it had to be possible to manufacture the new packet industrially on a large scale and at high speeds.

Invercote is produced from a pulp made of virgin fibers having no residual substances that can add any unwanted odor to the packaged product.

The silky-smooth surface of the new packet is the result of an entirely new coating method in which water-based lacquer is used containing much less solvent. The golden ring around the symbol is not bronze powder, but is transferred by an embossing foil. This material doesn't give problematic waste. And the printed gleam effects do not contain any metal, but consist of pearl-like pigment which will not harm the environment.

By choosing a cigarette packet, Iggesund has demonstrated many of Invercote's features at one and the same time. The cigarette packet was chosen because it is a small package which put greater demands on the paperboard than a large one. Its shapability, allowing dense creases, softly rounded edges, sharp corners, and clearly defined embossing, makes this board ideal for small-size packets.

Looking to the future

The final result is an unconventional packet offering very interesting solutions, both technically and in terms of design. Finish and stiffness are unusually good. Perhaps this new demonstration packet will guide the way for the development of advanced packages in the 90s? In any case, it shows that this paperboard has a variety of possibilities which the industry has not yet fully exploited.

original artwork perfectly. Another requirement is an absolutely even surface. Foiling is becoming more common to make packs more attractive. Foiling will reveal immediately if a surface is rough and cannot be accepted.

The cigarette packet and good taste

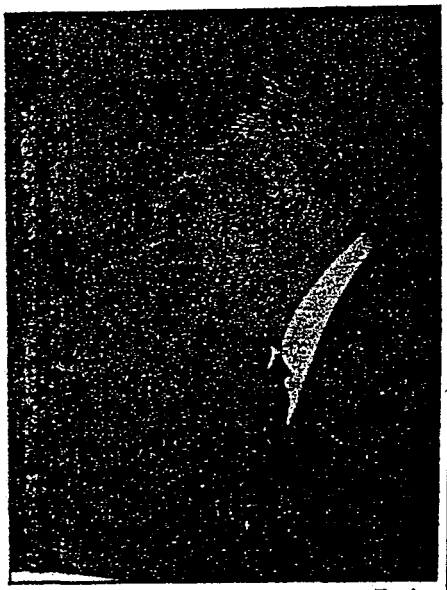
It should be a matter of course for a product to be packaged in a manner that stops it from picking up unwanted taste and color on its way from producer to consumer. This is particularly so in the tobacco industry, where flavor and aroma are among the most important means of competition and where considerable resources and much effort are put into giving the smoker-consumer a pleasant taste sensation.

Filter cigarettes most sensitive

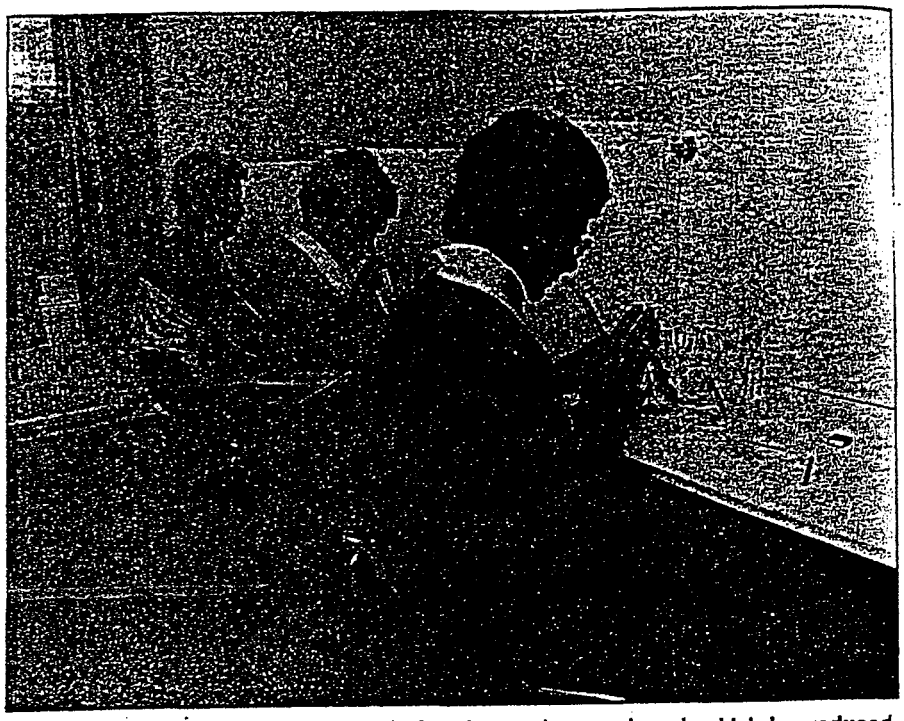
"As filter cigarettes are now completely predominant, demands for the board's purity have increased further," said chemist and Swedish packaging consultant, Jonas Andersson. "After all, the filter is there to absorb foreign matter. And it does so very effectively if the board contains substances that oxidize, that is, turn rancid."

The first few puffs would tell a habitual smoker if his or her favorite brand had any unwanted taste.

Oxidation—a rancid euphemism



Dr. Jonas Andersson, with the Odor & Taste Laboratory of Iggesund Bruk talked about the importance of good taste and odor in Vienna.



Laboratory staff perform quality control on Invercote paperboard, which is produced according to a strict set of overall standards. Iggesund has operated an advanced odor and taste laboratory for many years. Controls are conducted in various ways, but machines can never completely replace humans.

What is it then that makes some board give cigarettes an unwanted taste or odor?

The question has been studied in detail at Iggesund Paperboard AB in Sweden. Iggesund attaches great importance to supplying board which imparts as little taint and odors as possible. The company claims that it is one of the few manufacturers in the world to have a complete taste and odor laboratory of its own, together with test panels who continually make personal appraisals of both the company's and competitors' board.

Paperboard does not consist of pure cellulose alone. Traces of the original substances in the wood can remain in the fibers, especially small quantities of lignin and resin.

The cellulose itself has no smell. Neither has lignin or resin. It is the oxidation products which develop an odor. Oxidation simply means that substances in the wood turn rancid.

Oxidation is unavoidable and once it starts, it never ends. The wood substances begin to oxidize during paperboard manufacturing and the process continues afterwards, even without any supply of oxygen from the air, e.g. in the finished and stored reel of paperboard.

Oxidation must be delayed

Oxidation is a chain reaction. It starts suddenly and proceeds quickly. According to Iggesund's technical staff, the period before it starts should therefore be as long as possible and should cover the life of the product in every event.

The taste of board and tobacco together give the smoker a taste sensation. "But the tobacco manufacturer cannot build-in the taste of board in the overall taste right from the start," said Andersson. "That is because the taint and odor from board varies. Time is the all-important factor."

Invercote solves the problem

Iggesund's board for flip-top cigarette packets has shown that the problem can be solved. Full bleaching and washing make the oxidation process in Invercote, a solid four-ply product from Iggsund Paperboard, slower than in the most comparable board from other manufacturers.

Iggesund also makes sure that traces of heavy metals, mainly iron and manganese, are removed as far as possible. Otherwise they act as catalyzers which accelerate oxidation.

Packaging—close to nature

Paper is in many respects an ideal material. It is produced from renewable resources, it can be produced with low environmental impact, it is safe, it has excellent characteristics for a multitude of products, and it is easy to recycle. A product made of paper can satisfy strict requirements for "low resource use." Paper is probably the closest packaging can come to nature.

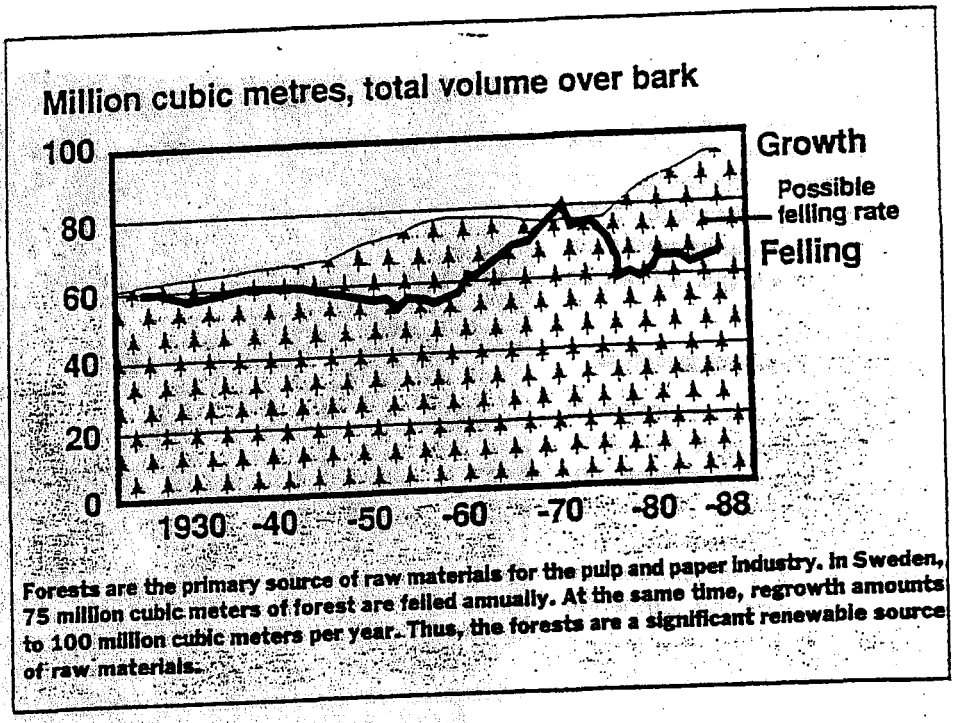
It should be made clear from the start that no industrial process or manufacture can be 100% environmentally safe. All industrial activity affects the environment in one way or another, whether by digging up ore, cutting forests, transporting goods, using water and air, and so on.

Equally, in the production of paper and paperboard, the goal must be to use as few resources as possible. The process must be conducted in a way that is least harmful to the environment. And more than ever before, the market is demanding that major consideration be given to the environment in the production, use, and recycling of all packaging paperboard.

At the same time, the traditional demands on quality remain: the package is expected to be pure and odor-free, elastic, bright, and white. It should be well suited for running through printing presses and packaging machines. And it should be suitable for a variety of attractive package designs.

It's not easy satisfying the demands for environmental safety and quality. But it can be done with improved technologies and processes, such as by using fewer environmentally hazardous substances in every stage of the process, by changing bleaching techniques, and by recirculating the chemicals and using equipment with high energy efficiency.

This is shown by the results of certain paper mills, including Sweden's Iggesund Paperboard, whose production now fulfills environmental demands far more strict than those required by the Swedish government.



Forests are the primary source of raw materials for the pulp and paper industry. In Sweden, 75 million cubic meters of forest are felled annually. At the same time, regrowth amounts to 100 million cubic meters per year. Thus, the forests are a significant renewable source of raw materials.

Environmental impact—an overall concept

Paperboard is just one element in a process comprising raw material extraction, production, use, recycling, and so on. All elements in this process should have as little environmental impact as possible.

Trees—the raw material—are the base. For a company such as Iggesund Paperboard, owning private forest stands is of utmost importance. The stands must be well managed and kept free from pollutants. Managed properly, trees are a renewable raw material—sunshine, rain, airborne carbon dioxide, and the earth's minerals will always yield new forests. (In Sweden, trees are now growing at a much faster rate than they are being cut. Regrowth amounts to 100 million cubic meters per year, while the area felled amounts to only 75 million cubic meters.)

Chemicals in a closed cycle

The next step in the cycle is production. As a matter of principal, production should be conducted in closed cycles without any discharges into the environment. And when discharges cannot be avoided, they should not contain any toxins. Everything which cannot be recycled in the process should be handled properly and safely. Energy used in the process should come from renewable energy sources.

Iggesund's example shows that it is possible. Today 99% of the chemicals used in cooking and oxygen bleaching are recovered. The spill from production is returned to the process. Biofuels (bark, wood residues, and spent liquors) and electricity from Iggesund's own hydroelectric power stations provide 90% of energy needs, while the goal is to switch the remaining 10% from primarily oil to renewable energy sources.

Pure paperboard

The third step in the cycle is use. The actual packet should not present any risks for humans or nature.

Paper, in its basic form, is harmless. In recent years, however, the hazards posed by dioxins have been brought into light. In response to this, Iggesund initiated a major project—Sulphate 90—to develop processes that counteract the formation of dioxins in bleaching. Since introduction of the new technique, Iggesund's dioxin content is equal to the background level found in unbleached pulps and papers, and the dioxin problem is hereby solved.

And finally, the fourth step in the circuit: Once the packet is used it can be recycled and be made into new paper. Alternatively, the solar energy inherent in the paper can be utilized by burning it. Or, if composted in the right way, the paper is biodegradable. (TI)

Marketing

Edited by Jeffrey A. Trachtenberg

What's a good product image worth? Philip Morris' Marlboro man could be worth as much as $10 billion.

Here's one tough cowboy

George Fernandez

YOU CAN TALK all you want about "marketing revolutions" and market fragmentation, but the hottest thing in selling today is a three-decades-old campaign and product: Marlboro's red-and-white geometric packaging—it's been the same since 1954. The brand does not try to compete on price, and the tobacco in it, though high quality, is no more expensive than its competitors'.

Still, this single product accounts for 28% of Philip Morris' $25 billion in revenues and brings in more than half its operating profits. On revenues of perhaps $7 billion, Marlboro last year netted a nice round $2 billion in operating profits. In a market crowded with more than 250 brands, it sells nearly one pack in four of cigarettes consumed in the U.S., and its share of the market is growing. The appeal is global: It would require 5,000 Boeing 747s to carry a single year's production of about 280 billion Marlboro cigarettes.

So extraordinary is Marlboro's pull that, since 1980, it has averaged more than 3% growth in this country at a time when the $33 billion cigarette industry has shrunk 1.5% to 2% a year in unit sales.

This remarkable success didn't just happen. Philip Morris Chairman and Chief Executive Hamish Maxwell recalls: "When Marlboro was reintroduced in 1954, Philip Morris was the smallest of the six major tobacco companies. We weren't [even] the first to introduce filtered cigarettes, but we saw the opportunity." That opportunity was the change in consumer preference from nonfilters like Lucky Strike and Camel to filtered cigarettes. Today nonfiltered cigarettes are only 6% of the U.S. market.

"Our success," he goes on, "was that much more remarkable when one remembers that Marlboro was initially introduced in 1924 with both an ivory tip and a red tip marketed primarily to women." Thirty years later, when Philip Morris reformulated and repackaged Marlboro, the brand was selling a paltry 18 million cigarettes annually. Then the best-selling brand in the U.S. was unfiltered Camels—81.3 billion butts a year—with a 22% market share.

In an era when consumer tastes swing on small differences—as often as not, differences of image rather than of product—Marlboro is a pure marketing success. The product has associated itself with an image of almost universal appeal: the cowboy in his red flannel shirt and suede vest on horseback, looking serious and professional; a couple of guys breaking hors-

es or awaking in the bunkhouse or just enjoying their solitude. No special effects, and no fancy dialog—the Marlboro Man never talks.

The sales growth has come despite the ban on TV advertising here and in many foreign countries. In fact, Marlboro probably profited here by the TV ban. Its image and product were well known, and it had already gained a large market share. Those who suffered most from TV bans on cigarette advertising were smaller brands—and new product introductions. It is so hard to launch a new cigarette successfully that since the TV ban started in the mid-1970s, only Merit, another Philip Morris product, has emerged as a major brand.

But how do you keep market share growing when you already have the biggest seller in a market and are denied access to television? The answer is line extension—marketing jargon for variations on the product.

For Marlboro the cowboy has worked remarkably well in line extension. In 1958 a softpack was added to the fliptop line. A menthol was introduced in 1966, a Marlboro 100 in 1967, Marlboro Lights in 1972, and in 1985 Marlboro 25s, which have 25 cigarettes in a pack. Marlboro Lights 100s in a box—a separate category because of its packaging—sold almost 4 billion units in 1986, is growing at 17% annually and already generates $125 million annually.

All that, thanks to that cowboy image. "What we're doing is keeping the brand modern by line extension, not changing the basic product," says Frank Resnik, president and chief executive of Philip Morris U.S.A. Says Sanford Bernstein analyst Marc Cohen: "The only category where Philip Morris is not doing well is nonfilters, which is the fastest-declining category of cigarettes."

R.W. Murray, president and chief executive of Philip Morris International, explains: "The cowboy has appeal to people as a personality. There are elements of adventure, freedom, being in charge of your destiny."

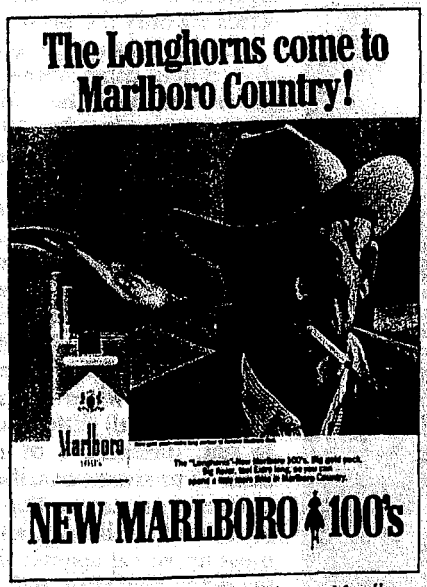
Srully Blotnick, a FORBES columnist and market researcher, recently conducted a study (1,546 individuals; 930 American, 616 European; median age: 33; median income: $36,000) of cigarette smokers to learn why they preferred Marlboro.

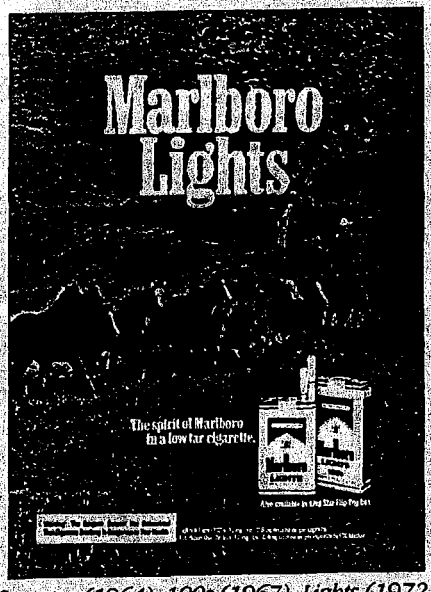
Blotnick reports that Americans tended to express their preference in terms of product quality: "Two representative replies: from a corporate lawyer (male), 35, 'They're stronger than Camels, which I also tried, and Winstons, which have a smell I don't like.' A 42-year-old entrepreneur (male) in the electronics field: 'When I inhale them, they make my lungs feel fuller than with any other cigarette.' "

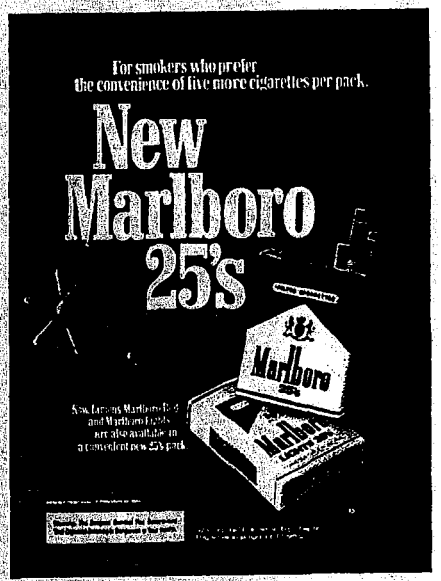
But Blotnick thinks that this talk of product difference is a rationalization; it is the image that attracts most of the customers. Says he: "The proof is that when we offered them Marlboros at half price—in generic brown boxes—only 21% were interested, even though we assured them that each package was fresh, had been sealed at the factory and was identical (except for the different packaging) to what they normally bought at their local tobacconist or cigarette machine." How to account for the difference? Simple. Smokers put their cigarettes in and out of their pockets 20 to 25 times a day. The package makes a statement. The consumer is expressing how he wants to be seen by others.

In a sense, the brand image often appeals to the socially insecure. Says Blotnick: "They use the cigarette as part of their wardrobe, the way some use costume jewelry or a watch."

Interestingly enough, the macho cowboy image works equally well internationally, but for somewhat different reasons. Abroad, it tells much about foreign attitudes toward Americans and the U.S. Foreigners associate America with the cowboy image, primarily because of Hollywood westerns. There is something in all this of foreign ambivalence toward America: simultaneous admiration, envy and resentment. Marlboro seems to elicit the admiration rather than the envy.







Two decades of campaigning—Marlboro Country (1964); 100s (1967), Lights (1972) and 25s (1985)
Staying modern by broadening the line . . . not changing it.

Thus Marlboros remained the number-one-selling cigarette in Panama at the very time agitators were turning out demonstrators to scream about U.S. Canal policies.

Blotnick's research showed that the Europeans were more candid than Americans about buying Marlboro for image rather than for product quality. Said an architect, 29 (male, born and raised in Munich, now living and working in New York), "If Americans want to be chic like a European, they have to buy a Mercedes or BMW. For us, it is easier; all we have to do is smoke Marlboros and wear jeans."

Many of the Europeans admired the U.S., even while criticizing its foreign policy, and wanted eventually to immigrate to this country and find a new home—and success for themselves—here. Smoking Marlboros is a kind of psychic downpayment on achieving that American dream.

Shonna Valeska/Visions

Philip Morris Chairman Hamish Maxwell
"We weren't the first . . . but we saw the opportunity."

But isn't cigarette smoking in terminal decline? There are reasons to doubt it. Medical research shows nicotine has alerting effects on the brain and, simultaneously, a relaxing effect on the body's skeletal muscle. The combination appeals to the socially hypersensitive people that smokers are, and it is one that the majority of smokers surveyed say they can't get from any other readily available over-the-counter product. The nicotine in cigarette smoke seemed to sample members an ideal mixture of Valium and a candy bar. Dangerous? So is fast driving, drinking and skydiving. But people who know the risks continue doing all these things.

Which is good news for Philip Morris. Although unit sales for two of its top brands, Merit and Benson & Hedges, are decreasing, Marlboro's pull is more than enough to offset those declines.

What is Philip Morris doing to keep Marlboro going? Watching the sales charts carefully and resisting the temptation to tamper with what works. Unlike most other major marketing companies, Philip Morris has resisted change for change's sake. It has not tampered with Marlboro's original packaging. Leo Burnett, the advertising agency that created the original Marlboro campaign, still has the account. "Look at our success rate. Why should we change?" asks William Campbell, executive vice president of marketing for Philip Morris U.S.A. "Every year our sales curve shows growth. Ask Volkswagen if they don't wish now that they'd stuck with their original television commercials."

Where Marlboro has experimented with other images—putting the Marlboro man on the slopes in Switzerland and Germany in the late 1960s—the campaign failed. As he has done for decades, the cowboy keeps on riding to the roundup, relaxing in the bunkhouse or enjoying his solitude—always with a cigarette rakishly held.

It makes one pause. At a time when the average American consumer is exposed to 2,000 advertising images a day, when marketing people strive constantly for something new, it's the old-fashioned, aw-shucks cowboy who really pulls the folks in to buy.

Thus, of all Philip Morris' many assets, none surpasses in value that most intangible of intangibles, the appeal of the Marlboro cowboy. That image is worth—what? A rough guess would be $10 billion. Why $10 billion? The company's total market value (240 million shares at 79) was recently $19 billion. Since Marlboro accounts for half the profits and also for most of the parent's high return on equity, the one product is probably worth more than half the company.

Dependence on something as ephemeral as a marketing image has its dangers, of course. But think of it this way: If you were a banker, which would you rather have as collateral—a lot of obsolete steel plants or the Marlboro man?—J.A.T.

Christopher Little

Philip Morris' Frank Resnik (left) *and R.W. Murray*
Red flannel shirts and open range in 150 countries.

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C.P.L.M. c. S125

Loi sur la protection de la santé des non-fumeurs

Table des matières Règlements

(Sanctionnée le 15 mars 1990)

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions

1(1) Les définitions qui suivent s'appliquent à la présente loi.

« **activité privée** » Activité où seules les personnes invitées ou autorisées expressément par l'hôte peuvent être présentes, qu'un droit d'entrée soit exigé ou non et quel que soit le but de l'activité. ("private function")

« **centre commercial** » Ensemble d'établissements commerciaux conçus pour la vente de biens, de services ou des deux au public. ("shopping mall")

« **débit de tabac** » Locaux où la principale activité commerciale est la fabrication, le mélange, la vente ou la distribution de tabac ou de produits connexes au tabac et où la vente ou la distribution d'autres produits est accessoire. ("tobacconist shop")

« **employé** » Sont comprises parmi les employés :

a) les personnes, notamment les bénévoles, qui travaillent pour un employeur afin d'offrir un service;

b) les personnes qui sont engagées afin d'offrir un service, qu'elles soient ou non liées par un contrat de travail;

c) les personnes qui reçoivent un enseignement ou une formation ou qui sont des apprentis. ("employee")

« **employeur** » Sont comprises parmi les employeurs les personnes qui, à titre de propriétaires, de gestionnaires ou de surveillants relativement à un secteur d'activité, à une entreprise, à un travail, à un métier, à une occupation ou à une profession dirigent des employés ou sont directement ou indirectement responsables à leur égard. ("employer")

« **endroit public fermé** » Endroit ouvert au public et situé dans une aire fermée, y compris :

a) toute partie :

(i) d'un immeuble de bureaux,

(ii) d'un établissement commercial, notamment un magasin au détail,

(iii) d'aires communes d'un immeuble résidentiel ou d'un centre commercial;

b) les établissements de soins de santé;

c) les garderies ou les jardins d'enfants;

d) les établissements d'enseignement;

e) les restaurants;

f) les ascenseurs;

g) les locaux visés par une licence;

h) les endroits fermés, à l'exception des résidences privées, où ont lieu des activités privées;

i) les clubs privés auxquels les membres ou les invités ont accès;

j) les abribus, les tunnels pour piétons ou les passerelles fermées;

k) les autres endroits ou catégories d'endroits prévus par règlement. ("enclosed public place")

« établissement de santé » Endroit où une personne peut recevoir des examens, des soins et des traitements médicaux, et s'entend notamment d'un hôpital, d'une clinique et d'un cabinet de médecin. La présente définition exclut les habitations collectives. ("health care facility")

« fournir » Vendre, donner, prêter ou fournir un objet de quelque façon que ce soit ou l'acheter pour le compte d'une personne en échange ou non d'une contrepartie. ("supply")

« fumer » ou **« usage du tabac »**

a) Fumer une cigarette, un cigare, une pipe ou tout autre instrument servant à fumer du tabac;

b) avoir la maîtrise d'une cigarette, d'un cigare ou d'une pipe allumés ou d'un autre instrument allumé servant à fumer du tabac. ("smoking")

« habitation collective »

a) Foyer de soins personnels au sens de la *Loi sur l'assurance-maladie*;

b) service de traitement de la toxicomanie ou de soins palliatifs d'un hôpital ou établissement de soins palliatifs qui sert de résidence aux malades en phase terminale;

c) établissement de soins en résidence au sens de la *Loi sur les services sociaux*, établissement résidentiel de traitement de la toxicomanie, établissement au sens de la *Loi sur*

la santé mentale ou le Centre manitobain de développement;

d) maison d'hébergement ou foyer de transition;

e) foyer de groupe ou centre de traitement au sens de la *Loi sur les services à l'enfant et à la famille*;

f) autre endroit ou catégorie d'endroits prévu par règlement. ("group living facility")

« lieu de travail intérieur » Aire fermée d'un bâtiment, d'une construction, d'une mine ou d'un autre endroit où les employés travaillent, notamment les salles à manger, les toilettes, les couloirs, les salles de repos, les aires d'accueil, les foyers, les vestibules, les ascenseurs, les escaliers mécaniques, les escaliers, les aires d'agrément, les aires d'entreposage, les placards, les buanderies et les garages qu'utilisent les employés ainsi que les autres aires fermées qu'ils fréquentent dans le cadre de leur travail. La présente définition exclut les résidences privées. ("indoor workplace")

« locaux visés par une licence » Locaux visés par une licence au sens de la *Loi sur la réglementation des alcools*. ("licensed premises")

« ministre » Le ministre chargé par le lieutenant-gouverneur en conseil de l'application de la présente loi. ("minister")

« produit connexe au tabac » Papier à cigarette, tube à cigarette, filtre de cigarette, confectionneuse de cigarettes, pipe ou autre chose utilisée avec du tabac et prévue par règlement. ("tobacco-related product")

« propriétaire » Personne, notamment un propriétaire ou un employeur, qui dirige les activités se déroulant dans un endroit, une aire ou un véhicule. La présente définition inclut les personnes qui sont sur place et qui dirigent les activités à un moment donné. ("proprietor")

« restaurant » S'entend notamment de toute partie d'un café-restaurant, d'une cafétéria, d'un comptoir-sandwiches, d'une aire de restauration ou d'un autre établissement de restauration qui est situé dans un endroit public fermé et qui est ouvert au public, que la totalité ou seulement une partie du local soit visé ou non par une licence. ("restaurant")

« tabac » Tabac, sous toute forme que ce soit, destiné à l'utilisation ou à la consommation, notamment les cigarettes, les cigares, le tabac sans fumée et le tabac en feuille. La présente définition exclut les aliments, les drogues et les instruments qui contiennent de la nicotine et auxquels s'applique la *Loi sur les aliments et drogues* (Canada). ("tobacco")

« véhicule public » Véhicule automobile servant au transport public de personnes ou de biens. Sont inclus dans la présente définition les autobus, les taxis et les limousines. ("public vehicle")

Exception — aire extérieure destinée à la consommation de boissons ou de nourriture

1(2) Est un endroit public fermé ou un lieu de travail intérieur au sens de la présente loi toute aire extérieure destinée à la consommation de boissons ou de nourriture qui est conforme aux exigences réglementaires et qui fait partie d'un restaurant, de locaux visés par une licence, d'un club privé auquel les membres ou les invités ont accès ou d'un endroit fermé, autre qu'une résidence privée, où se déroule une activité privée ou qui est exploitée conjointement avec les établissements ou l'endroit précités.

L.M. 1994, c. 24, art. 3; L.M. 2002, c. 37, art. 2; L.M. 2004, c. 17, art. 2.

Interdiction de fumer dans les endroits fermés
2(1) Sauf dans la mesure prévue aux articles 3 à 5.1, il est interdit de fumer :

a) dans un endroit public fermé;

b) dans un lieu de travail intérieur;

c) dans une habitation collective;

d) dans un véhicule public;

e) dans un véhicule qui est utilisé pour le travail et qui transporte au moins deux employés.

Responsabilité du propriétaire
2(2) Le propriétaire d'un endroit, d'une aire ou d'un véhicule où il est interdit de fumer en vertu de la présente loi fait en sorte que l'interdiction soit respectée.

L.M. 1994, c. 24, art. 4; L.M. 2004, c. 17, art. 3.

Exception — habitation collective
3(1) Les malades hospitalisés ou les résidents d'une habitation collective, à l'exception d'une habitation qui accueille uniquement des enfants, peuvent fumer dans une pièce distincte si celle-ci, à la fois :

a) est désignée à titre de fumoir par le propriétaire ou le conseil d'administration de l'habitation;

b) n'est pas fréquentée par des malades hospitalisés ni des résidents qui sont non-fumeurs;

c) est complètement fermée par des murs allant du plancher au plafond, par des portes et par un plafond qui la séparent des aires adjacentes où il est interdit de fumer en vertu de la présente loi;

d) a un système de ventilation distinct.

Exception — chambre
3(2) Les clients inscrits et leurs invités peuvent fumer dans une chambre d'hôtel, de motel, d'auberge ou de gîte touristique si les conditions suivantes sont remplies :

a) la chambre est conçue principalement pour y dormir;

b) le propriétaire la désigne à titre de chambre pour fumeurs;

c) elle est complètement fermée par des murs allant du plancher au plafond, par des portes et par un plafond qui la séparent des aires adjacentes où il est interdit de

fumer en vertu de la présente loi;

d) elle a un système de ventilation distinct.

Disposition transitoire

3(3) L'obligation d'avoir un système de ventilation distinct prévue au paragraphe (1) ou (2) ne vise que les chambres construites ou considérablement rénovées après l'entrée en vigueur du présent article.

L.M. 1994, c. 24, art. 5; L.M. 1995, c. 33, art. 20; L.M. 2004, c. 17, art. 3.

Exception — débit de tabac

4 Le propriétaire d'un débit de tabac ainsi que ses employés et ses clients peuvent fumer pour essayer un produit si le débit :

a) d'une part, est complètement fermé par des murs allant du plancher au plafond, par des portes et par un plafond qui le séparent des aires adjacentes où il est interdit de fumer en vertu de la présente loi;

b) d'autre part, a un système de ventilation distinct pour autant que ses activités commerciales aient initialement débuté après l'entrée en vigueur du présent article.

L.M. 1994, c. 24, art. 6; L.M. 2004, c. 17, art. 3.

Propagation de la fumée

5 Le propriétaire d'un endroit où il est permis de fumer en vertu de l'article 3 ou 4 prend des mesures raisonnables pour réduire la propagation de la fumée dans les aires où il est interdit de fumer.

L.M. 1994, c. 24, art. 7; L.M. 2004, c. 17, art. 3.

Exception — pratiques traditionnelles autochtones

5.1 La présente loi n'a pas pour effet d'interdire :

a) aux Autochtones d'utiliser du tabac dans le cadre de pratiques ou de cérémonies traditionnelles autochtones de nature spirituelle ou culturelle;

b) aux personnes qui ne sont pas des Autochtones d'utiliser du tabac en compagnie d'Autochtones dans le cadre de telles pratiques ou cérémonies.

L.M. 2004, c. 17, art. 3.

Arrêté municipal

6(1) Malgré les dispositions de la présente loi, un conseil municipal peut, par arrêté municipal, limiter ou interdire l'usage du tabac dans tout endroit public fermé de la municipalité.

Incompatibilité

6(2) Les dispositions de la présente loi ou de ses règlements l'emportent sur les dispositions incompatibles des arrêtés pris par la Ville de Winnipeg ou une autre municipalité en vertu du paragraphe (1) ou d'une autre loi de la Législature. Toutefois, les dispositions des arrêtés l'emportent si elles sont plus strictes ou plus restrictives que les dispositions de la présente loi ou de ses règlements ou si leur application est plus étendue que celle des dispositions de la présente loi ou de ses règlements.

Affichage par le propriétaire

6.1(1) Conformément aux règlements, le propriétaire d'un endroit, d'une aire ou d'un véhicule où il est interdit de fumer en vertu de la présente loi y place en permanence des affiches faisant état de l'interdiction.

Enlèvement interdit

6.1(2) Seul le propriétaire ou une personne agissant sous ses directives peut enlever, modifier,

cacher, abîmer ou détruire une affiche placée conformément au paragraphe (1).

L.M. 2004, c. 17, art. 4.

Cendriers

6.2 Le propriétaire veille à ce qu'aucun cendrier ni objet semblable ne soit placé ni ne demeure à un endroit ou dans une aire où il est interdit de fumer en vertu de la présente loi.

L.M. 2004, c. 17, art. 4.

Interdiction de fournir du tabac aux enfants

7(1) Il est interdit de fournir ou d'offrir de fournir du tabac ou des produits connexes au tabac à un enfant.

Exceptions

7(2) Le paragraphe (1) ne s'applique pas :

a) au parent ni au tuteur d'un enfant qui fournit à l'enfant du tabac ou des produits connexes au tabac dans un endroit autre qu'un lieu public ou qu'un endroit où le public a normalement accès;

b) à une personne qui donne à un enfant du tabac ou des produits connexes au tabac si le cadeau n'est utilisé que pour des cérémonies ou des pratiques autochtones spirituelles ou culturelles.

Disculpation

7(3) Dans une poursuite ou une procédure engagée à l'égard d'une infraction visée au paragraphe (1), est disculpé le prévenu qui établit selon la prépondérance des probabilités qu'il a pris les précautions voulues pour s'assurer, avant de fournir ou d'offrir de fournir du tabac ou des produits connexes au tabac à un enfant, que celui-ci était âgé d'au moins 18 ans en lui demandant la production d'un document, prévu aux règlements, attestant son âge. Le prévenu devait également avoir des raisons raisonnables de croire que le document produit était authentique, et que la personne était âgée d'au moins 18 ans.

Preuve par inférence

7(4) Dans une poursuite ou une procédure engagée à l'égard d'une infraction visée au paragraphe (1), est réputé, jusqu'à preuve du contraire, contenir du tabac ou des produits connexes au tabac tout récipient ou emballage qui crée une inférence permettant de croire de façon raisonnable qu'il contient ces objets.

L.M. 1994, c. 24, art. 8; L.M. 2002, c. 37, art. 3.

Règlements sur l'étalage et la publicité

7.1 L'article 7.2 et le paragraphe 7.3(1) ne s'appliquent pas aux endroits ni aux locaux servant principalement à la vente de tabac ou de produits connexes au tabac si ces endroits ou ces locaux sont désignés par règlement pour l'application de ces dispositions.

L.M. 2002, c. 37, art. 4.

Étalage

7.2 Il est interdit d'étaler ou de permettre l'étalage, à la vue des enfants, de tabac ou de produits connexes au tabac dans un endroit ou dans des locaux dans lesquels sont vendues ces choses.

L.M. 2002, c. 37, art. 4.

Matériel publicitaire ou promotionnel
7.3(1) Il est interdit de faire la publicité ou la promotion du tabac ou des produits connexes au tabac :

a) dans les endroits ou les locaux dans lesquels sont vendus ces objets;

b) dans les endroits ou les locaux auxquels les enfants ont accès;

c) sur un panneau extérieur de quelque genre que ce soit, y compris :

(i) les panneaux-réclames et les panneaux portatifs,

(ii) les panneaux sur un banc, un véhicule ou une construction, notamment un bâtiment;

d) dans une construction, notamment un bâtiment, ou dans un véhicule si le matériel publicitaire ou promotionnel est visible de l'extérieur de ces endroits.

Liste des produits et des prix
7.3(2) Malgré le paragraphe (1), les endroits ou les locaux visés par l'alinéa (1)a) peuvent comporter des panneaux réglementaires sur lesquels sont inscrits la liste des produits du tabac ou des produits connexes au tabac offerts en vente ainsi que leur prix.

Distributeur automatique
7.3(3) Le paragraphe (1) n'a pas pour effet d'interdire la possession ou l'exploitation par ailleurs légitime d'un distributeur automatique de tabac ou de produits connexes au tabac.

L.M. 2002, c. 37, art. 4.

Inspecteurs
7.4(1) Le ministre peut désigner des personnes ou des membres de catégories de personnes à titre d'inspecteurs pour l'application de la présente loi. Les agents de police, les agents de police spéciaux et les membres de la Gendarmerie royale du Canada sont également inspecteurs pour l'application de la présente loi.

Cartes d'identité
7.4(2) Le ministre peut délivrer une carte d'identité aux inspecteurs.

L.M. 2004, c. 17, art. 5.

Pouvoirs de visite
7.5(1) Un inspecteur peut, à toute heure convenable, procéder à la visite d'un local, d'un endroit, d'une aire ou d'un véhicule public si cette mesure est nécessaire afin de lui permettre d'appliquer la présente loi ou ses règlements ou de déterminer s'ils sont observés.

Pouvoirs supplémentaires
7.5(2) En plus d'exercer les pouvoirs visés au paragraphe (1), l'inspecteur peut, si cette mesure est nécessaire afin de lui permettre d'appliquer la présente loi ou ses règlements ou de déterminer s'ils sont observés :

a) procéder aux inspections, aux enquêtes, aux examens, aux essais ou aux analyses qu'il estime nécessaires;

b) exiger qu'une substance ou qu'une chose soit produite pour examen, essai ou analyse;

c) saisir une substance ou une chose ou en prélever des échantillons;

d) prendre des photographies ou enregistrer des bandes vidéo concernant un local, un endroit, une aire, un véhicule public, une substance ou une chose.

Assistance
7.5(3) Le propriétaire communique à l'inspecteur les renseignements que celui-ci peut valablement exiger et lui prête toute l'assistance possible afin de lui permettre d'exercer ses attributions.

L.M. 2004, c. 17, art. 5.

Rapport à un inspecteur
7.6(1) Toute personne qui a des motifs raisonnables de croire qu'une infraction à la présente loi ou aux règlements a été commise ou peut l'être peut signaler à un inspecteur les raisons qui lui permettent d'en arriver à cette conclusion.

Immunité
7.6(2) Bénéficient de l'immunité les personnes qui communiquent des renseignements de bonne foi en vertu du présent article.

Sanctions interdites
7.6(3) Il est interdit aux employeurs de prendre des sanctions contre les employés qui communiquent des renseignements de bonne foi en vertu du présent article.

Interdiction de gêner ou de harceler
7.6(4) Il est interdit de gêner ou de harceler la personne qui communique des renseignements en vertu du présent article.

L.M. 2004, c. 17, art. 5.

Infraction et peine — disposition générale
8(1) Quiconque contrevient à la présente loi, à l'exception de l'article 2 ou 5, ou aux règlements commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire :

a) une amende maximale de 3 000 $ pour une première infraction;

b) une amende maximale de 5 000 $ pour une deuxième infraction;

c) une amende maximale de 15 000 $ pour toute récidive après la deuxième infraction.

Infraction et peine — paragraphe 2(1)
8(2) Les particuliers qui contreviennent au paragraphe 2(1) commettent une infraction et encourent, sur déclaration de culpabilité par procédure sommaire :

a) une amende de 100 $ à 500 $ pour une première infraction;

b) une amende de 200 $ à 750 $ pour une deuxième infraction;

c) une amende de 300 $ à 1 000 $ pour toute récidive après la deuxième infraction.

Infraction et peine — paragraphe 2(2) ou article 5

8(2.1) Les particuliers et les personnes morales qui contreviennent au paragraphe 2(2) ou à l'article 5 commettent une infraction et encourent, sur déclaration de culpabilité par procédure sommaire :

a) une amende de 500 $ à 3 000 $ pour une première infraction;

b) une amende de 750 $ à 5 000 $ pour une deuxième infraction;

c) une amende de 1 000 $ à 15 000 $ pour toute récidive après la deuxième infraction.

Prescription

8(3) La poursuite d'une infraction à la présente loi se prescrit par un an à partir de sa perpétration.

L.M. 1994, c. 24, art. 9; L.M. 2002, c. 37, art. 5; L.M. 2004, c. 17, art. 6.

Infraction — dirigeants et administrateurs

8.1 En cas de perpétration par une personne morale d'une infraction à la présente loi ou aux règlements, ceux de ses dirigeants ou administrateurs qui l'ont autorisée ou qui y ont consenti commettent également l'infraction et encourent, sur déclaration de culpabilité par procédure sommaire, une amende ne dépassant pas l'amende que pourrait se voir imposer la personne morale.

L.M. 2002, c. 37, art. 6.

Règlements

9(1) Le lieutenant-gouverneur en conseil peut, par règlement :

a) exempter une catégorie d'endroits public fermés de l'application de la présente loi;

a.1) pour l'application de la définition de « endroit public fermé », prévoir des endroits ou des catégories d'endroits;

a.2) pour l'application de la définition de « habitation collective », prévoir des endroits ou des catégories d'endroits;

a.3) pour l'application du paragraphe 1(2), fixer les critères permettant de déterminer dans quels cas les aires extérieures destinées à la consommation de boissons ou de nourriture constituent des endroits publics fermés ou des lieux de travail intérieurs au sens de la présente loi;

b) abrogé, S.M. 2004, c. 17, art. 7;

c) prescrire la forme et le contenu des panneaux exigés ou permis par la présente loi, ainsi que la manière de les placer et l'endroit où les installer;

d) prendre toute autre mesure d'application de la présente loi;

e) prendre des mesures concernant l'emballage et l'étiquetage du tabac et des produits du tabac, notamment la taille de leurs emballages;

f) prévoir les choses utilisées avec le tabac à titre de produit connexe au tabac;

g) pour l'application du paragraphe 7(3), prévoir les documents qui peuvent servir à déterminer

l'âge d'une personne;

h) pour l'application de l'article 7.2 ou du paragraphe 7.3(1), prévoir les endroits ou les locaux ou les catégories d'endroits ou de locaux dans lesquels du tabac ou des produits connexes au tabac peuvent être étalés ou faire l'objet de publicité ou d'activités promotionnelles;

i) pour l'application des articles 3 et 4, définir les termes qui sont utilisés dans la présente loi mais qui n'y sont pas définis, notamment les termes « considérablement rénovées » et « système de ventilation distinct ».

Recommandations du comité consultatif

9(2) Avant de faire des recommandations au lieutenant-gouverneur au sujet des règlements pris en application de l'alinéa (1)c) à l'égard des panneaux réglementaires visés par le paragraphe 7.3(2), le ministre demande au comité consultatif établi en application de l'article 9.1 de lui faire part de conseils et de recommandations.

L.M. 1994, c. 24, art. 10; L.M. 2002, c. 37, art. 7; L.M. 2004, c. 17, art. 7.

Comité consultatif

9.1(1) Le ministre établit un comité consultatif qui le conseille et lui fait des recommandations, à sa demande, sur les questions se rapportant à l'étalage, à la publicité et à la promotion du tabac et des produits connexes au tabac.

Composition du comité consultatif

9.1(2) Au moins le tiers des membres du comité consultatif établi en vertu du paragraphe (1) sont, selon le ministre, des représentants de détaillants de tabac.

L.M. 2002, c. 37, art. 8.

Immunité

9.2 Bénéficient de l'immunité le ministre, les inspecteurs et les autres personnes qui agissent sous l'autorité de la présente loi ou de ses règlements pour les actes accomplis de bonne foi ou les omissions ou manquements commis non intentionnellement dans l'exercice effectif ou censé tel des attributions qui leur sont conférées en vertu de ces textes.

L.M. 2004, c. 17, art. 8.

Couronne liée

9.3 La présente loi lie la Couronne.

L.M. 2004, c. 17, art. 8.

Non-application

9.4 La présente loi ne s'applique pas aux pénitenciers, aux aéroports réglementés par le gouvernement fédéral, aux bases des Forces canadiennes, aux autres endroits ou locaux où se trouvent des entreprises fédérales ni aux terres réservées pour les Indiens. Pour l'application du présent article, le terme « entreprises fédérales » a le sens que lui attribue le *Code canadien du travail*.

L.M. 2004, c. 17, art. 8.

Codification permanente

10 La présente loi est le chapitre S125 de la *Codification permanente des lois du Manitoba*.

Entrée en vigueur

11 La présente loi entre en vigueur à la date fixée par proclamation.

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Standards of Pharmacy Practice
(Sale of Tobacco)

Guidelines
on
Promotion and Sale of Tobacco Products
by
Community Pharmacies

In Accordance with
Pharmaceutical Association Regulation 14(1)

Approved by Newfoundland Pharmaceutical Association Council, June 19, 2000
Amended February 4, 2001

Guidelines for Promotion and Sale of Tobacco

Introduction

For many years the Newfoundland Pharmaceutical Association has had a policy which supports the voluntary removal of the promotion and sale of tobacco from pharmacies in Newfoundland and Labrador. At a General meeting of the Association on November 8, 1998 this policy was strengthened to establish a goal of having all pharmacies in Newfoundland and Labrador tobacco free.

Recognizing the economic impact that the removal of the sale of tobacco would have on pharmacies in the province, the Association established a Task Force to measure that impact and to make recommendations as to how the goal of tobacco free pharmacies might best be achieved. The Task Force recommended a phased reduction in the promotion and sale of tobacco by pharmacies, finally resulting in the removal of all aspects of the sale of tobacco from all pharmacies in the province. The Association continues to encourage the voluntary immediate removal of tobacco from pharmacies.

The Association recognizes that smoking and the use of tobacco has serious adverse effects on the health of Newfoundlanders and Labradorians, but also recognizes that the removal of tobaccos from pharmacies, by itself, will have no impact on the sale or use of tobacco in the province. The Task Force, while making recommendations on the phased removal of promotion and sale of tobacco from pharmacies, also made recommendations as to how pharmacists can play an active part in reducing the consumption of tobacco.

These Standards of Practice represent the standards expected of pharmacists, based upon the report of the Tobacco Free Task Force, January 7, 2000.

Definition of a Pharmacy

For the purposes of these Guidelines a "pharmacy" means any premises containing a pharmacy licensed by the Newfoundland Pharmaceutical Association and includes any adjacent retail space that is used for the sale or promotion of the sale of tobacco products which can be directly accessed from the premises containing a licensed pharmacy.

A "Tobacco Kiosk", "Smoke Shop", or the like, which:

a) may be entered without physically exiting the premises which contains a licensed pharmacy;
b) is separated from premises containing a pharmacy by walls which are not opaque;
c) contains signage or advertising specifically placed to be visible from within a licensed pharmacy, or;
d) contains signage or advertising promoting a pharmacy;

will be considered to be a part of the premises containing a pharmacy.

New Pharmacies

No pharmacist may advertise, promote or sell, or permit to be advertised, promoted or sold, tobacco products from a pharmacy which begin operation, or changes ownership, after January 1, 2001.

Educational Programs

The Association, with the cooperation and input from other interested stakeholders, shall develop educational programs to be delivered by pharmacists in schools and to community associations. These educational programs will promote the cessation of smoking by smokers and discourage the starting of smoking by non-smokers.

Mandatory Promotion of Smoking Cessation

Each year the Association shall declare a "Smoking Cessation Week" and the pharmacists in every pharmacy shall actively participate in a program developed by the Association to promote Smoking Cessation.

Recognition of Tobacco Free Pharmacies

Beginning in Smoking Cessation Week of 2000, the Association shall institute a program that visibly recognizes pharmacies that do not promote or sell tobacco.

Smokers Identified on Patient Profiles

Beginning January 1, 2001, the patient profile kept on every patient over 19 years old **may, where appropriate,** indicate whether the patient is a smoker, has formerly smoked, or has never smoked.
(amended February 4, 2001)

Out of Section Displays of Tobacco Products Banned

Beginning January 1, 2001, no pharmacist shall display, or permit to be displayed tobacco products in a pharmacy, except in a single designated tobacco display section.

Removal of Promotional Materials

Beginning January 1, 2001 no pharmacy or pharmacist shall advertise, or promote, or permit to be advertised, or promoted, tobacco products in a pharmacy. Promotional materials, including display stands, window signs, clocks, distinctive shelving, provided by tobacco manufacturers, their agents or wholesalers, shall not be displayed in a pharmacy.

Promotion of the Role of the Pharmacist in Smoking Cessation

Beginning January 1, 2001 every pharmacy with a tobacco display section shall post, at the 5 to 6 foot high level in that tobacco display section, signage with the wording
"If you're ready to quit, ask our pharmacist."

Single Point of Sale of Tobacco

Beginning January 1, 2002, tobacco products may be sold in a pharmacy only at a single point of sale. Customers wishing to purchase tobacco products must be served from that checkout only.

Display of Bulk Tobacco Products

Beginning in January 1, 2003, no pharmacist may display, and no pharmacist may permit the display of bulk tobacco products (eg. cartons of cigarettes, tubs of tobacco) in a pharmacy. The display of tobacco products may not exceed a facing area greater than 4 feet wide and 6 feet high.

Display of Individual Tobacco Products

Beginning January 1, 2004, no pharmacist may display, and no pharmacist shall permit the display of tobacco products in view of the public in a pharmacy.

No Tobacco Products in Pharmacies

Beginning January 1, 2005, no pharmacist may sell, and no pharmacist shall permit the sale of tobacco products from a pharmacy.

These guidelines shall come into effect on July 1, 2000.

SIXTH SESSION
FIRST LEGISLATIVE ASSEMBLY
OF NUNAVUT

SIXIÈME SESSION
PREMIÈRE ASSEMBLÉE LÉGISLATIVE
DU NUNAVUT

GOVERNMENT BILL

PROJET DE LOI DU GOUVERNEMENT

BILL 33

PROJET DE LOI N^{O} 33

TOBACCO CONTROL ACT

LOI SUR LA RÉGLEMENTATION DE L'USAGE DU TABAC

Summary

This Bill prohibits the sale of tobacco to minors, introduces point of sale restrictions on tobacco products, places restrictions on packaging and regulates where people can smoke.

Résumé

Le présent projet de loi interdit la vente de tabac aux mineurs, prévoit des restrictions applicables au point de vente sur les produits du tabac, impose des exigences en matière d'emballage et détermine les endroits où il est permis de fumer.

Date of Notice Date de l'avis	1st Reading 1re lecture	2nd Reading 2e lecture	Reported from Standing Committee Présentation du rapport du comité permanent	Reported from Committee of the Whole Présentation du rapport du comité plénier	3rd Reading 3e lecture	Date of Assent Date de sanction
21-03-2003	24-03-2003	25-03-2003	21-10-2003	03-11-2003	03-11-2003	05-11-2003

Peter Irniq
Commissioner of Nunavut
Commissaire du Nunavut

PROJET DE LOI N° 33

LOI SUR LA RÉGLEMENTATION DE L'USAGE DU TABAC

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PROJET DE LOI N° 33

LOI SUR LA RÉGLEMENTATION DE L'USAGE DU TABAC

Préambule

Attendu :

que les jeunes et les enfants du Nunavut sont porteurs de notre avenir et de notre culture;

qu'en comparaison des autres canadiens, un grand nombre de jeunes Nunavummiut continuent de commencer à faire usage du tabac et un grand nombre d'adultes Nunavummiut continuent à faire usage du tabac;

que des preuves établissent un lien entre l'usage des produits du tabac et l'incidence de nombreuses maladies qui nuisent à la santé des Nunavummiut et qu'il a été démontré que les effets nocifs de la fumée du tabac sont sérieusement dommageables pour la santé et qu'elle représente un danger pour la santé de tous les Nunavummiut;

que le gouvernement du Nunavut a la responsabilité de promouvoir la santé de tous les Nunavummiut en limitant leur accès aux produits du tabac et en les préservant des incitations à l'usage du tabac et que la culture inuit exige le respect et le soin de soi et des autres membres de nos collectivités;

qu'il est souhaitable pour la promotion et la protection de la santé, de la sécurité et du bien-être des Nunavummiut, de veiller à ce que les endroits publics et les lieux de travail soient exempts de fumée du tabac,

le commissaire du Nunavut, sur l'avis et avec le consentement de l'Assemblée législative, édicte :

DÉFINITIONS

Définitions

1. Les définitions qui suivent s'appliquent à la présente loi.

« employé » Personne qui exécute un travail pour le compte d'un employeur ou lui fournit un service, ou à qui un employeur donne des instructions ou une formation dans le cadre de son activité, son entreprise, son travail, son métier ou sa profession; y sont assimilés le bénévole et le travailleur autonome. « emploi » a un sens correspondant. (*employee*)

« employeur » Propriétaire, gestionnaire, chef, responsable, superviseur ou surveillant d'une activité, d'une entreprise, d'un travail, d'un métier ou d'une profession, selon le cas, qui dirige un employé ou exerce un contrôle sur lui, ou qui est directement ou indirectement responsable de l'emploi d'un employé. (*employer*)

« fumer » ou « usage du tabac » Y est assimilé le fait d'avoir sur soi un article pour fumeurs, notamment un cigare, une cigarette ou une pipe, qui est allumé. ("*smoke*" or "*smoking*")

« gestionnaire » Personne qui en bout de ligne commande, dirige ou gère l'activité qui se déroule dans un lieu public; est également visée par la présente définition la personne qui est effectivement responsable des lieux à un moment donné. (*proprietor*)

« lieu de travail » Ensemble ou partie d'un bâtiment, d'une construction, d'un véhicule ou d'un moyen de transport dans lequel au moins un employé travaille; sont compris dans un lieu de travail tous les espaces utilisés par un employé. (*workplace*)

« lieu public » Ensemble ou partie d'un bâtiment, d'une construction, d'un véhicule ou d'un moyen de transport, couvert par un toit ou non, auquel le public a accès de droit ou sur invitation, expresse ou tacite, qu'un prix d'entrée soit demandé ou non; sont exclus de la présente définition les rues, chemins et routes. (*public place*)

« ministre » Le ministre de la Santé et des Services sociaux, sauf indication contraire du contexte. (*Minister*)

« restaurant ou bar » Établissement qui prépare, vend et sert au public ou aux membres ou aux invités d'un club privé, de la nourriture ou des rafraîchissements, ou les deux, destinés à être consommés sur place. (*restaurant or bar*)

Champ d'application

2. (1) La présente loi s'applique à toute forme de tabac traité ou non qui peut être fumé, inhalé, chiqué ou prisé. Toutefois, elle ne s'applique pas aux produits destinés à la thérapie de remplacement de la nicotine.

Gouvernement lié

(2) La présente loi lie le gouvernement du Nunavut.

FOURNITURE DE TABAC AUX PERSONNES DE MOINS DE 19 ANS

Vente ou fourniture de tabac aux personnes de moins de 19 ans

3. (1) Il est interdit de vendre ou de fournir du tabac, ou d'offrir d'en vendre ou d'en fournir, à quiconque est âgé de moins de 19 ans.

Vente ou fourniture de tabac aux personnes qui semblent être âgées de moins de 19 ans

(2) Il est interdit de vendre ou de fournir du tabac, ou d'offrir d'en vendre ou d'en fournir, à quiconque semble être âgé de moins de 19 ans, quel que soit son âge réel.

Moyen de défense

(3) Constitue un moyen de défense contre une accusation portée aux termes du paragraphe (1) ou (2) le fait que le défendeur a cru que la personne qui a reçu le tabac était âgée d'au moins 19 ans parce qu'elle a produit une forme d'identification réglementaire indiquant son âge et qu'il n'existait pas de motif apparent de douter que le document était authentique ou qu'il avait été légalement délivré à la personne qui l'a produit.

Document irrégulier

(4) Nul ne doit produire, comme preuve de son âge, une forme d'identification qui ne lui a pas été légalement délivrée.

VENTE INTERDITE DE PRODUITS QUI ONT L'APPARENCE DU TABAC

Vente interdite de produits qui ont l'apparence du tabac

4. Il est interdit de vendre ou de fournir, ou d'offrir de vendre ou de fournir à quiconque un produit, y compris une friandise, conçu pour avoir l'apparence d'une cigarette, d'un cigare, d'une pipe ou d'un produit du tabac.

DILIGENCE RAISONNABLE ET RESPONSABILITÉ DU FAIT D'AUTRUI

Politiques, pratiques et procédures

5. (1) Le détaillant de tabac doit disposer de politiques, de pratiques et de procédures écrites qui sont intégrées à son fonctionnement quotidien et qui visent à décourager et à empêcher la vente et la fourniture de tabac aux personnes âgées de moins de 19 ans.

Formation et éducation

(2) Le détaillant de tabac fournit à ses employés la formation et l'éducation qui conviennent dans les circonstances afin que ceux-ci :

a) comprennent la présente loi et les règlements;

b) comprennent les politiques, les pratiques et les procédures du détaillant;

c) comprennent leurs devoirs sous le régime de la présente loi, des règlements et des politiques, des pratiques et des procédures du détaillant, et qu'ils soient en mesure de s'en acquitter.

Mécanisme de contrôle

(3) Le détaillant de tabac instaure un mécanisme de contrôle, qui convient dans les circonstances, destiné :

a) à lui permettre de déterminer si les employés se conforment à la présente loi, aux règlements et aux politiques, aux pratiques et aux procédures du détaillant comme l'exige le présent article;

b) à identifier les facteurs qui peuvent avoir une incidence sur l'habileté des employés de se conformer aux exigences de la présente loi, des règlements ou des politiques, des pratiques et des procédures du détaillant.

Registre des mesures prises

(4) Le détaillant conserve un registre dans lequel il inscrit toutes les mesures prises en application des paragraphes (2) et (3).

Contenu des politiques, des pratiques et des procédures

(5) Les politiques, les pratiques et les procédures du détaillant doivent, au minimum :

a) interdire aux employés de manipuler des produits du tabac avant qu'ils n'aient été complètement formés et éduqués par des membres du personnel d'expérience comme l'exige le présent article;

b) pourvoir à la formation des employés pour que ceux-ci :

(i) exigent de quiconque semble être âgé de moins de 19 ans qu'il produise une forme d'identification réglementaire,

(ii) refusent de vendre ou de fournir du tabac lorsque la forme d'identification réglementaire n'est pas produite,

(iii) apprennent comment examiner les pièces d'identité de façon à déterminer si ce sont des formes d'identification réglementaires.

Nature du contrôle

(6) Le contrôle exercé par un détaillant doit consister au minimum :

a) à superviser les nouveaux employés et ceux qui ont contrevenu à la présente loi, aux règlements ou aux politiques, aux pratiques et aux procédures du détaillant, jusqu'à ce que le détaillant soit convaincu que les employés comprennent les exigences de la présente loi, des règlements et des politiques, des pratiques et des procédures du détaillant et qu'ils y adhèrent;

b) lorsque cela est possible dans les circonstances, à procéder de façon autonome à des vérifications de conformité visant à déterminer si les employés se conforment à la présente loi, aux règlements et aux politiques, aux pratiques et aux procédures du détaillant;

c) à évaluer régulièrement le rendement des employés au moyen de l'observation directe.

Responsabilité du fait d'autrui

6. Le détaillant de tabac est réputé responsable de toute infraction au paragraphe 3(1) ou 3(2) commise dans son établissement par son employé ou son mandataire, à moins qu'il ne soit démontré qu'il a fait preuve de diligence raisonnable conformément à ce qui est prévu à l'article 5.

PRÉSENTOIRS ET VENTE DE TABAC

Manipulation interdite

7. Il est interdit de vendre ou de fournir du tabac dans un établissement de vente au détail en exposant le tabac d'une façon qui permet aux personnes de le prendre avant de le payer.

Présentoirs et publicité promotionnelle

8. Il est interdit de faire de la publicité sur le tabac ou les produits du tabac ou d'en promouvoir l'usage dans un établissement de vente au détail à moins que la publicité ou le présentoir ne respecte les exigences réglementaires.

VENTE DE TABAC INTERDITE

Vente de tabac interdite

9. Il est interdit de vendre ou d'offrir de vendre du tabac dans les endroits suivants :

a) un établissement de santé au sens de la *Loi sur l'assurance-hospitalisation et l'administration des services de santé et des services sociaux*;

b) une garderie au sens de la *Loi sur les garderies*;

c) une maison de soins infirmiers;

d) un foyer pour personnes âgées;

e) les locaux commerciaux d'un pharmacien au sens de la *Loi sur la pharmacie*, ou dans leur voisinage immédiat;

f) un endroit appartenant à une catégorie définie par les règlements.

EMBALLAGE ET AFFICHES

Format des paquets

10. Il est interdit de vendre ou d'offrir de vendre des cigarettes au détail ou en vue d'une vente au détail subséquente, ou de les distribuer ou d'offrir de les distribuer à cette fin à moins qu'elles ne soient dans des paquets qui en comprennent au moins 20 ou tel nombre supérieur prévu par les règlements.

Affiches

11. Il est interdit, dans quelque endroit que ce soit, de vendre ou d'offrir de vendre du tabac au détail, à moins que des affiches comportant une mise en garde en matière de santé et d'autres renseignements et mentionnant les interdictions prévues à l'article 3 ne soient posées dans cet endroit conformément aux règlements.

DISTRIBUTEUR AUTOMATIQUE

Distributeur automatique : interdiction générale

12. (1) Indépendamment du fait qu'un permis a été délivré sous le régime de la *Loi de la taxe sur le tabac,* nul ne doit permettre qu'un distributeur automatique pour la vente ou

la fourniture de tabac ne se trouve dans un endroit dont il est le propriétaire ou l'occupant.

Exceptions

(2) Le paragraphe (1) ne s'applique pas au distributeur automatique qui ne contient pas de tabac et qui, selon le cas :

a) est situé à un endroit auquel le public n'a pas accès;

b) ne fonctionne pas.

RÉGLEMENTATION RELATIVE À L'USAGE DU TABAC

Interdiction de fumer dans les lieux de travail

13. (1) Il est interdit de fumer dans un lieu de travail ou dans un rayon de trois mètres de toute entrée ou sortie d'un lieu de travail, qu'il s'y trouve ou non une affiche mentionnant l'interdiction.

Exception : abri fermé

(2) La règle des trois mètres prévue au paragraphe (1) ne s'applique pas dans le cas d'un abri fermé réservé à l'usage du tabac qui est situé à moins de trois mètres d'une entrée ou d'une sortie, si l'abri est conçu de façon à ce que la fumée qui s'y trouve n'entre pas en contact avec les personnes qui entrent dans le lieu de travail ou en sortent.

Devoirs de l'employeur

(3) Chaque employeur a le devoir :

a) de veiller à l'observation du présent article;

b) d'aviser chaque employé du lieu de travail qu'il est interdit d'y fumer;

c) de placer bien en vue à chaque entrée et dans toutes les toilettes du lieu de travail, conformément aux modalités réglementaires, des affiches indiquant qu'il est interdit de fumer dans le lieu de travail;

d) de faire en sorte qu'aucun cendrier ni semblable article pour fumeurs ne soit placé dans un quelconque endroit du lieu de travail et que leur présence ne soit pas tolérée.

Exception

(4) Le présent article ne s'applique pas dans le cas :

a) d'un restaurant ou d'un bar;

b) de la partie d'un lieu de travail qui sert de résidence privée et dans laquelle le public n'est pas admis;

c) d'une chambre située dans un hôtel, un motel ou un autre lieu où des chambres sont louées pour l'hébergement de nuit, si la chambre est utilisée uniquement pour l'hébergement de nuit et qu'elle est, au moment de la location, désignée comme une chambre où l'usage du tabac est permis et est réservée à cette fin particulière;

d) d'un lieu de travail dans lequel le public n'est pas admis et qui est situé dans un logement, si les seuls employés de ce lieu de travail sont les habitants du logement;

e) d'une zone qui est réservée à l'usage du tabac, si la zone est située dans un foyer pour personnes âgées ou dans un autre endroit visé par les règlements, pour autant que la zone soit conforme aux exigences réglementaires.

Zone non conforme aux exigences

(5) Il est interdit au propriétaire ou à l'exploitant d'un foyer pour personnes âgées visé à l'alinéa (4)e) de désigner une zone où l'usage du tabac est permis si cette zone n'est pas conforme aux exigences réglementaires.

Interdiction

(6) Il est interdit à l'employeur ou à la personne qui agit pour le compte de celui-ci de prendre les mesures suivantes parce qu'un employé a agi conformément à la présente loi ou parce qu'il a cherché à la faire appliquer :

a) congédier ou menacer de congédier l'employé;

b) imposer une peine disciplinaire ou une suspension à l'employé, ou menacer de le faire;

c) prendre des sanctions à l'égard de l'employé;

d) intimider l'employé ou user de coercition à son égard.

Interdiction de fumer dans les lieux publics

14. (1) Il est interdit de fumer dans les aires communes d'un immeuble d'habitation ou d'un condominium ou dans un lieu public ou un rayon de trois mètres de toute entrée ou sortie d'un lieu public, qu'il s'y trouve ou non une affiche mentionnant l'interdiction.

Exception : abri fermé

(2) La règle des trois mètres prévue au paragraphe (1) ne s'applique pas dans le cas d'un abri fermé réservé à l'usage du tabac qui est situé à moins de trois mètres d'une entrée ou d'une sortie, si l'abri est conçu de façon à ce que la fumée qui s'y trouve n'entre pas en contact avec les personnes qui entrent dans le lieu public ou en sortent.

Interdiction de fumer près d'une école

(3) Il est interdit de fumer dans un rayon de quinze mètres de toute entrée ou sortie d'une école.

Devoirs du gestionnaire

(4) Chaque gestionnaire d'un lieu public a le devoir :

a) de veiller à l'observation du présent article;

b) d'aviser chaque personne qui se trouve dans ce lieu qu'il est interdit d'y fumer;

c) de placer bien en vue à chaque entrée et dans toutes les toilettes du lieu public, conformément aux modalités réglementaires, des affiches indiquant qu'il est interdit de fumer dans le lieu public;

d) de faire en sorte qu'aucun cendrier ni semblable article pour fumeurs ne soit placé dans un quelconque endroit du lieu public et que leur présence ne soit pas tolérée.

Exception

(5) Le présent article ne s'applique pas dans le cas :

a) d'un restaurant ou d'un bar;

b) d'une chambre située dans un hôtel, un motel ou un autre lieu où des chambres sont louées pour l'hébergement de nuit, si la chambre est utilisée uniquement pour l'hébergement de nuit et qu'elle est, au moment de la location, désignée comme une chambre où l'usage du tabac est permis et est réservée à cette fin particulière.

Pouvoir du gestionnaire d'expulser une personne

(6) Le gestionnaire peut, par des moyens raisonnables dans les circonstances, expulser une personne du lieu public si celle-ci refuse de se conformer à l'interdiction de fumer.

Incompatibilité

15. En cas d'incompatibilité entre une disposition de la présente loi et une disposition d'une autre loi, d'un règlement ou d'un règlement municipal pris par un conseil municipal en vertu de la *Loi sur les cités, villes et villages* ou de la *Loi sur les hameaux* et portant sur l'usage du tabac, la disposition qui limite le plus l'usage du tabac l'emporte.

INSPECTION

Inspecteurs

16. (1) Le ministre peut nommer des personnes ou des catégories de personnes à titre d'inspecteurs pour l'application de la présente loi.

Inspection

(2) Pour déterminer si la présente loi est observée, un inspecteur peut, sans mandat, pénétrer dans les endroits visés à l'article 9 et aux paragraphes 13(1) et 14(1) ainsi que dans les établissements des grossistes en tabac et des négociants de tabac et en faire l'inspection.

Restriction des pouvoirs

(3) Le ministre peut, lorsqu'il nomme un inspecteur, restreindre les pouvoirs d'entrée et d'inspection de celui-ci à des endroits ou des genres d'endroits précisés parmi ceux visés au paragraphe (2).

Heure d'entrée

(4) Le pouvoir de pénétrer dans un endroit pour y faire une inspection sans mandat ne peut être exercé que pendant les heures d'ouverture normales de l'endroit.

Logements

(5) L'inspecteur ne pénètre pas sans mandat dans la partie d'un endroit qui sert de logement pour y faire une inspection.

Usage de la force

(6) L'inspecteur n'a pas le droit de recourir à la force pour pénétrer dans un endroit en vue d'y faire une inspection.

Identification

(7) L'inspecteur qui fait une inspection produit, sur demande, une attestation de sa nomination.

Pouvoirs de l'inspecteur

(8) L'inspecteur qui fait une inspection peut :

a) examiner les documents ou autres choses qui se rapportent à l'inspection;

b) demander formellement la production, aux fins d'inspection, des documents ou autres choses qui se rapportent à celle-ci;

c) enlever, aux fins d'examen, des documents ou d'autres choses qui se rapportent à l'inspection et en faire des copies;

d) afin de produire quelque document que ce soit sous une forme lisible, recourir aux dispositifs ou systèmes de stockage, de traitement ou de récupération des données qui sont utilisés habituellement pour les activités de l'endroit;

e) interroger des personnes sur toute question qui se rapporte à l'inspection.

Distributeur automatique

(9) L'inspecteur qui fait une inspection peut ouvrir un distributeur automatique destiné à la vente ou la fourniture de tabac si les conditions suivantes sont réunies :

a) le distributeur automatique fonctionne ou se trouve dans un endroit auquel le public a accès;

b) le propriétaire ou l'exploitant d'un endroit visé au paragraphe 12(1) refuse ou est incapable d'ouvrir le distributeur;

c) l'inspecteur a des motifs raisonnables de croire qu'il y a du tabac dans le distributeur.

Immunité

(10) Nul n'est responsable des dommages causés au distributeur relativement à l'ouverture de celui-ci.

Saisie

(11) L'inspecteur peut saisir, sans avis ni autre acte de procédure, le tabac et l'argent trouvés dans le distributeur.

Confiscation

(12) Le tabac saisi en vertu du présent article est confisqué en faveur du gouvernement du Nunavut et il en est disposé conformément aux instructions du ministre des Finances.

Argent

(13) L'argent trouvé dans un distributeur automatique qui contient du tabac saisi en vertu du présent article est confisqué en faveur du ministre des Finances.

Demande formelle par écrit et récépissé

(14) La demande formelle visant la production, aux fins d'inspection, des documents ou autres choses doit être présentée par écrit et énoncer la nature des documents ou des choses dont la production est exigée et lorsque les documents ou les choses sont enlevés, l'inspecteur remet à la personne à qui ils ont été enlevés un récépissé.

Production de documents et aide obligatoires

(15) Si un inspecteur fait une demande formelle pour que soient produits, aux fins d'inspection, des documents ou autres choses, la personne qui a la garde des documents ou des choses les produit et, dans le cas des documents, fournit, sur demande, l'aide qui est raisonnablement nécessaire pour interpréter les documents ou les produire sous une forme lisible.

Enlèvement des documents et des choses

(16) Les documents ou autres choses qui ont été enlevés aux fins d'examen et de copie sont :

a) d'une part, mis à la disposition de la personne à qui ils ont été enlevés aux fins d'examen et de copie, à la demande de celle-ci et aux date, heure et lieu qui conviennent à la personne et à l'inspecteur;

b) d'autre part, retournés à la personne dans un délai raisonnable.

Copie admissible en preuve

(17) Les copies de documents qui se présentent comme étant certifiées conformes aux originaux par l'inspecteur sont admissibles en preuve au même titre que les originaux et ont la même valeur probante que ceux-ci.

Entrave

(18) Il est interdit de gêner ou d'entraver le travail de l'inspecteur qui effectue une inspection ni, relativement à des sujets se rapportant à l'inspection, de refuser de répondre à des questions ou de fournir sciemment à l'inspecteur des renseignements faux ou trompeurs.

INFRACTIONS ET PEINES

Infractions

17. (1) Quiconque contrevient au paragraphe 3(1), 3(2) ou 3(4), à l'article 4,7, 8, 9 ou 10 ou au paragraphe 13(1), 13(6), 14(1), 14(3), 16(18), 19(5), 20(6), 21(4) ou 21(5) est coupable d'une infraction et passible, sur déclaration de culpabilité par procédure sommaire, d'une amende fixée conformément au paragraphe (4).

Infraction qui se poursuit, affiches

(2) Quiconque contrevient à l'article 11 ou au paragraphe 13(5) ou 21(1) est coupable d'une infraction et passible, sur déclaration de culpabilité par procédure sommaire, pour chaque journée ou partie de journée pendant laquelle l'infraction se commet ou se poursuit, d'une amende fixée conformément au paragraphe (4).

Infraction qui se poursuit, diligence raisonnable

(3) Quiconque fait défaut de satisfaire aux exigences prévues au paragraphe 5(1), 5(2), 5(3), 5(4), 13(3) ou 14(4) est coupable d'une infraction et passible, sur déclaration de culpabilité par procédure sommaire, pour chaque journée ou partie de journée pendant laquelle l'infraction se commet ou se poursuit, d'une amende fixée conformément au paragraphe (4).

Établissement de l'amende maximale

(4) Malgré toute autre loi, l'amende, ou l'amende quotidienne, selon le cas, ne doit pas être supérieure au montant obtenu en déterminant le nombre de déclarations de culpabilité prononcées à l'égard du défendeur pour la même infraction au cours des cinq années précédant la déclaration de culpabilité actuelle et en sélectionnant :

a) si le défendeur est un particulier, le montant indiqué dans la colonne 3 du tableau figurant au présent article, vis-à-vis le nombre de déclarations de culpabilité préalables indiqué dans la colonne 2 et du numéro de l'article ou du paragraphe, indiqué dans la colonne 1, de la disposition à laquelle il a été contrevenu;

b) si le défendeur est une personne morale, le montant indiqué dans la colonne 4 du tableau figurant au présent article, vis-à-vis le nombre de déclarations de culpabilité préalables indiqué dans la colonne 2 et du numéro de l'article ou du paragraphe, indiqué dans la colonne 1, de la disposition à laquelle il a été contrevenu.

Ordre des déclarations de culpabilité

(5) Afin de déterminer, pour l'application du paragraphe (4), le nombre de déclarations de culpabilité prononcées à l'égard du défendeur pour la même infraction, il ne doit être tenu compte que de l'ordre des déclarations de culpabilité et non de l'ordre dans lequel les infractions ont été commises, ni du fait qu'une infraction a été commise avant ou après une déclaration de culpabilité.

Infraction qui se poursuit, distributeur automatique

(6) Quiconque contrevient au paragraphe 12(1) est coupable d'une infraction et passible, sur déclaration de culpabilité par procédure sommaire, pour chaque journée ou partie de journée pendant laquelle l'infraction se commet ou se poursuit, d'une amende d'au plus 2 000 $.

Devoir des administrateurs et des dirigeants

(7) Les administrateurs et les dirigeants d'une personne morale qui se livre à la fabrication, à la vente ou à la distribution de tabac ont le devoir d'exercer toute la prudence raisonnable pour empêcher la personne morale de contrevenir à la présente loi.

Devoirs des administrateurs et des dirigeants

(8) Les administrateurs et les dirigeants d'une personne morale qui est propriétaire, qui occupe ou exploite un endroit visé à l'alinéa 13(4)e) ou qui en fait l'entretien, ont le devoir d'exercer toute la prudence raisonnable pour empêcher la personne morale de contrevenir au paragraphe 13(5).

Infraction

(9) Malgré toute autre loi, quiconque a le devoir imposé au paragraphe (7) ou (8) et ne s'en acquitte pas est coupable d'une infraction et passible, sur déclaration de culpabilité par procédure sommaire, d'une amende d'au plus 100 000 $.

Immunité

(10) Quiconque peut être poursuivi et reconnu coupable d'une infraction aux termes du paragraphe (9) même si la personne morale n'a pas été poursuivie ou reconnue coupable.

TABLEAU

1	2	3	4
DISPOSITION À LAQUELLE IL A ÉTÉ CONTREVENU	DÉCLARATIONS DE CULPABILITÉ PRÉALABLES	AMENDE MAXIMALE— PARTICULIER	AMENDE MAXIMALE— PERSONNE MORALE
		$	$
3 (1), 3(2)	0	4 000	15 000
	1	10 000	20 000
	2	20 000	50 000
	3 ou plus	100 000	150 000
3(4), 4, 5(1), 5(2), 5(3), 5(4), 7, 8, 9, 11, 13(3), 13(5), 13(6), 14(4), 16(18), 19(5), 20(6), 21(1), 21(4), 21(5)	0	2 000	5 000
	1	5 000	15 000
	2	10 000	25 000
	3 ou plus	50 000	75 000
10	0	2 000	100 000
	1	5 000	300 000
	2	10 000	300 000
	3 ou plus	50 000	300 000
13(1), 14(1), 14(3)	0	1 000	
	1 ou plus	5 000	

Injonction

18. En plus des sanctions prévues à l'article 17, le ministre peut demander à la Cour de justice du Nunavut de rendre une injonction à l'endroit de la personne qui, ayant été déclarée coupable d'une infraction à la présente loi ou aux règlements, continue d'y contrevenir, et la Cour peut, en plus de toute autre mesure de redressement et toute autre sanction imposées, rendre une ordonnance interdisant à la personne de poursuivre ou de répéter l'infraction.

INTERDICTION AUTOMATIQUE

Infractions relatives à la vente de tabac

19. (1) Pour l'application du présent article, constituent des infractions relatives à la vente de tabac :

a) la contravention au paragraphe 3(1) ou 3(2), à l'article 4, 7, 8, 10, 11 ou 12 ou au paragraphe (5) du présent article;

b) la contravention à l'article 5.1 de la *Loi de la taxe sur le tabac.*

Avis

(2) Lorsqu'il prend connaissance du fait que les conditions suivantes sont remplies, le ministre, ou la personne qu'il désigne par écrit, envoie un avis concernant l'interdiction imposée par le paragraphe (5) au propriétaire ou à l'occupant de l'endroit où les infractions relatives à la vente de tabac ont été commises, au propriétaire ou au locataire du bien-fonds sur lequel l'endroit est situé, au ministre des Finances et à tous les grossistes en tabac au Nunavut :

a) une ou plusieurs personnes ont été reconnues coupables, au cours d'une période de cinq ans, de deux infractions relatives à la vente de tabac commises à un endroit dont la personne est le propriétaire ou l'occupant;

b) une personne a été reconnue coupable, au cours des cinq années précédant la dernière déclaration de culpabilité visée à l'alinéa a), d'une troisième infraction relative à la vente de tabac commise au même endroit;

c) le délai imparti pour interjeter appel de la déclaration de culpabilité visée à l'alinéa a) a expiré sans qu'un appel soit interjeté, ou un appel a été tranché définitivement.

Application du paragraphe (2)

(3) Le paragraphe (2) ne s'applique pas lorsque, entre la première et la seconde déclaration de culpabilité, entre la première et la troisième ou entre la seconde et la troisième, l'endroit a fait l'objet d'un transfert de propriété au terme d'une transaction entre des parties n'ayant aucun lien de dépendance.

Date

(4) L'avis précise la date à laquelle il doit prendre effet.

Vente, entreposage et livraison interdits

(5) Indépendamment du fait qu'un permis a été délivré sous le régime de la *Loi de la taxe sur le tabac*, pendant la période qui s'applique :

a) il est interdit de vendre ou d'entreposer du tabac à l'endroit où les infractions relatives à la vente de tabac ont été commises;

b) aucun grossiste ne doit livrer ou faire livrer du tabac à cet endroit.

Période applicable

(6) Pour l'application du paragraphe (5), la période qui s'applique est :

a) la période de six mois qui suit la date précisée dans l'avis visé au paragraphe (2), si la personne a été reconnue coupable, au cours des cinq années précédant la déclaration de culpabilité actuelle, de deux autres infractions relatives à la vente de tabac commises au même endroit;

b) la période de neuf mois qui suit la date précisée dans l'avis, si la personne a été reconnue coupable, au cours de la période de cinq ans, de trois autres infractions relatives à la vente de tabac commises au même endroit;

c) la période de 12 mois qui suit la date précisée dans l'avis, si la personne a été reconnue coupable, au cours de la période de cinq ans, de plus de trois autres infractions relatives à la vente de tabac commises au même endroit.

Moyen de défense

(7) Constitue un moyen de défense contre une accusation portée aux termes du paragraphe (5) le fait que le défendeur n'avait pas reçu l'avis au moment où l'infraction a été commise.

Exception

(8) L'interdiction d'entreposer du tabac ne s'applique pas aux petites quantités de tabac gardées pour l'usage personnel et immédiat des personnes qui travaillent à l'endroit.

Ordre des déclarations de culpabilité

(9) Afin de déterminer, pour l'application du présent article, le nombre de déclarations de culpabilité prononcées à l'égard d'une personne pour une autre infraction relative à la vente de tabac, il ne doit être tenu compte que de l'ordre des déclarations de culpabilité et non de l'ordre dans lequel les infractions ont été commises, ni du fait qu'une infraction a été commise avant ou après une déclaration de culpabilité.

Publication dans un journal

(10) Le ministre ou la personne qu'il désigne par écrit fait paraître une copie de l'avis visé au paragraphe (2) dans un journal distribué localement dans la collectivité où les infractions ont été commises.

Saisie

20. (1) L'inspecteur peut saisir, sans avis ni autre acte de procédure, le tabac qui est entreposé dans un endroit contrairement à l'article 19.

Confiscation

(2) Le tabac saisi en vertu du présent article est confisqué et il en est disposé conformément aux instructions du ministre des Finances.

Argent

(3) L'argent trouvé dans un distributeur automatique qui contient du tabac saisi en vertu du présent article est confisqué en faveur du ministre des Finances.

Distributeur automatique

(4) Le pouvoir de saisie de l'inspecteur comprend le pouvoir d'ouvrir un distributeur automatique pour en examiner le contenu s'il a des motifs raisonnables de soupçonner que le distributeur contient du tabac entreposé dans un endroit contrairement à l'article 19, et nul n'est responsable des dommages causés au distributeur relativement à l'ouverture de celui-ci.

Application des paragraphes 16(4) à 16(7)

(5) Les paragraphes 16(4), 16(5), 16(6) et 16(7) s'appliquent, avec les adaptations nécessaires, à l'inspecteur qui agit en vertu du paragraphe (1) ou (3).

Entrave

(6) Il est interdit de gêner ou d'entraver le travail de l'inspecteur qui agit en vertu du présent article.

Affiches

21. (1) Le propriétaire ou l'occupant d'un endroit assujetti à l'interdiction prévue à l'article 19 fait en sorte que les affiches soient posées dans l'endroit conformément aux règlements.

Affichage par l'inspecteur

(2) Si les affiches ne sont pas posées de façon réglementaire, l'inspecteur peut pénétrer sans mandat dans les lieux et poser les affiches conformément aux règlements.

Application des paragraphes 16(4) à 16(7)

(3) Les paragraphes 16(4), 16(5), 16(6) et 16(7) s'appliquent, avec les adaptations nécessaires, à l'inspecteur qui agit en vertu du paragraphe (2).

Entrave

(4) Il est interdit de gêner ou d'entraver le travail de l'inspecteur qui agit en vertu du paragraphe (2).

Interdiction d'enlever les affiches

(5) Il est interdit d'enlever une affiche posée en application du présent article tant que l'interdiction est en vigueur.

DISPOSITIONS DIVERSES

Règlements

22. (1) Le commissaire en conseil peut, par règlement :

a) définir un terme employé dans la présente loi qui n'y est pas déjà défini;

b) prescrire ou prévoir tout ce qui doit ou peut l'être en application de la présente loi;

c) prendre toute mesure utile ou nécessaire à la mise en œuvre des dispositions de la présente loi.

Réglementation du format des paquets

(2) Le règlement portant sur les exigences relatives à l'emballage et pris en application de l'article 10 peut prescrire le format minimum des paquets de façon qu'ils contiennent au moins le nombre prescrit d'articles ou de grammes de tabac.

Application générale ou particulière

(3) Le règlement peut avoir une portée générale ou particulière.

Catégories

(4) La description d'une catégorie visée par les règlements peut se fonder sur n'importe quelle caractéristique ou combinaison de caractéristiques et peut inclure ou exclure tout membre qui y est précisé, que celui-ci présente ou non les mêmes caractéristiques que les autres membres de la catégorie.

Codes

(5) Le commissaire en conseil peut, par règlement, adopter par renvoi, avec les modifications qu'il juge nécessaires, tout ou partie d'un code, d'une norme, d'une ligne directrice ou d'une procédure, et en exiger l'observation.

Intégration continuelle

(6) Si un règlement pris en vertu du paragraphe (5) le prévoit, le code, la norme, la ligne directrice ou la procédure est adopté avec ses modifications successives, que celles-ci aient été adoptées avant ou après le règlement.

Rapport annuel du médecin-hygiéniste en chef

23. (1) Le médecin-hygiéniste en chef établit un rapport annuel portant sur la mise en œuvre de la présente loi et le remet au ministre en conformité avec la partie IX de la *Loi sur la gestion des finances publiques*.

Assemblée législative

(2) Le ministre dépose le rapport remis en application du paragraphe (1) devant l'Assemblée législative à la première occasion suivant sa réception.

MODIFICATIONS CORRÉLATIVES

Modification de la *Loi de la taxe sur le tabac*

24. (1) Le paragraphe 22(4) de la *Loi de la taxe sur le tabac* est abrogé et remplacé par ce qui suit :

Interdiction : grossiste

(4) Un grossiste ne peut vendre ou livrer du tabac destiné à la revente :

a) à une personne qui n'est pas titulaire d'un permis valide de détaillant;

b) à un détaillant dont le permis a été suspendu en vertu du paragraphe 22.10(1), à l'endroit visé par la suspension et tant que la suspension est en vigueur.

Autre modification

(2) La même loi est modifiée par insertion de ce qui suit :

Suspension du permis en cas d'interdiction automatique

22.10. (1) Le ministre peut suspendre le permis d'un détaillant dès qu'il est avisé par le ministre de la Santé et des Services sociaux, ou par une personne que celui-ci a désignée par écrit, que le détaillant fait l'objet d'une interdiction automatique relative à la vente de tabac sous le régime de la *Loi sur la réglementation de l'usage du tabac.*

Période de suspension

(2) La suspension imposée en vertu du présent article s'applique uniquement à l'endroit visé par l'interdiction automatique et pour la durée et aux dates fixées dans l'avis du ministre de la Santé et des Services sociaux ou de la personne qu'il a désignée.

Signification de l'avis

(3) Une copie de la décision relative à la suspension est signifiée au détaillant en la remettant ou en l'envoyant par courrier recommandé à l'adresse indiquée sur son permis, et un avis de la suspension est envoyé à tous les grossistes en tabac au Nunavut.

Entreposage

(4) Pendant la période de suspension, il est interdit de vendre ou d'entreposer du tabac à l'endroit visé par l'interdiction automatique.

Saisie

(5) L'agent d'exécution peut saisir, sans avis ni autre acte de procédure, le tabac qui est entreposé dans un endroit contrairement au présent article.

Confiscation

(6) Le tabac saisi en vertu du présent article est confisqué en faveur du gouvernement du Nunavut et il en est disposé conformément aux instructions du ministre.

Modification de la *Loi sur les cités, villes et villages*

25. La *Loi sur les cités, villes et villages* est modifiée par insertion de ce qui suit :

Définitions

54.6. (1) Les définitions qui suivent s'appliquent au présent article.

« lieu de travail » Sont compris dans les lieux de travail les véhicules de transport public. (*workplace*)

« véhicule de transport public » Y sont assimilés l'autobus scolaire et le véhicule utilisé pour le transport de passagers à titre onéreux. (*public transit vehicle*)

Règlement municipal, usage du tabac dans les lieux publics et les lieux de travail

(2) Le conseil peut, par règlement municipal, régir l'usage du tabac dans les lieux publics et les lieux de travail situés dans les limites de la municipalité et désigner des

lieux publics ou des lieux de travail, ou des catégories ou parties de tels lieux, comme des lieux où sont interdits l'usage du tabac et le fait d'avoir sur soi du tabac allumé.

Portée du règlement municipal

(3) Le règlement municipal pris en vertu du paragraphe (2) peut :

a) aux fins de son application, définir « lieu public » et « lieu de travail »;

b) exiger des propriétaires ou occupants d'un lieu désigné dans le règlement municipal qu'ils placent des affiches faisant mention de l'interdiction ou de tout autre renseignement portant sur l'usage du tabac comme l'exige le règlement municipal;

c) prescrire la forme, le contenu et l'emplacement des affiches visées à l'alinéa b), de même que la façon de les placer;

d) permettre aux propriétaires ou occupants d'un lieu désigné dans le règlement municipal de réserver, dans ce lieu, une zone à l'usage du tabac qui respecte les critères prévus dans le règlement municipal;

e) prévoir les critères qui s'appliquent aux zones réservées à l'usage du tabac visées à l'alinéa d), y compris les normes relatives à la ventilation dans ces zones;

f) prescrire que les zones réservées à l'usage du tabac dans les lieux désignés dans le règlement municipal doivent être identifiées comme des zones où il est permis de fumer;

g) exiger des employeurs d'un lieu de travail ou des propriétaires ou occupants d'un lieu public qu'ils veillent à l'observation du règlement municipal.

Lieux publics

(4) Indépendamment de la définition qu'il contient d'un « lieu public », le règlement municipal pris en vertu du paragraphe (2) ne peut s'appliquer à une rue, un chemin ou une route.

Inspecteurs

(5) La municipalité peut nommer des inspecteurs pour l'application du règlement municipal pris en vertu du paragraphe (2).

Entrée sans mandat

(6) Pour déterminer si le règlement municipal est observé, un inspecteur peut, à toute heure raisonnable, pénétrer sans mandat dans les lieux publics et les lieux de travail désignés dans le règlement municipal.

Logements

(7) Malgré le paragraphe (6), l'inspecteur ne peut exercer son pouvoir afin de pénétrer dans un endroit, ou dans la partie d'un endroit, qui sert de logement sauf si :

a) l'occupant du logement consent à laisser entrer l'inspecteur après que celui-ci l'a informé de son droit de refuser son consentement;

b) le pouvoir est exercé en vertu d'un mandat délivré en vertu du présent article, dans le cas où l'occupant refuse son consentement.

Pouvoirs de l'inspecteur

(8) L'inspecteur peut procéder aux interrogatoires et aux enquêtes et faire les demandes de renseignements qui sont nécessaires pour déterminer si le règlement municipal est observé.

Entrave

(9) Il est interdit d'entraver le travail d'un inspecteur qui effectue une inspection en vertu du présent article.

Mandat

(10) Le juge de la Cour de justice du Nunavut ou le juge de paix qui est convaincu, à la lumière des renseignements qui lui sont présentés sous serment, qu'il existe des motifs raisonnables de croire qu'un mandat est nécessaire pour permettre à un inspecteur d'exercer les pouvoirs qu'un règlement municipal pris en vertu du présent article lui confère, peut décerner un mandat autorisant l'inspecteur et toute autre personne que le mandat désigne à pénétrer dans un endroit, y compris un endroit qui sert de logement, pour y effectuer, sous réserve des conditions précisées dans le mandat, l'inspection prévue dans le règlement municipal.

Avis

(11) La demande visée au paragraphe (10) peut être faite sans en aviser l'occupant, le propriétaire ou quiconque est concerné.

Usage de la force

(12) L'inspecteur peut recourir à la force qui est raisonnablement nécessaire pour l'exécution du mandat et peut faire appel aux agents de la paix afin de l'assister dans le cadre de cette exécution.

Infraction

(13) Quiconque contrevient au paragraphe (9) est coupable d'une infraction.

Gouvernement lié

(14) Le présent article lie le gouvernement du Nunavut.

Incompatibilité

(15) En cas d'incompatibilité entre une disposition d'un règlement municipal pris par le conseil en vertu du présent article et une disposition d'une loi ou d'un règlement, la disposition qui limite le plus l'usage du tabac l'emporte.

Modification de la *Loi sur les hameaux*

26. La *Loi sur les hameaux* est modifiée par insertion de ce qui suit :

Définitions

54.6. (1) Les définitions qui suivent s'appliquent au présent article.

« lieu de travail » Sont compris dans les lieux de travail les véhicules de transport public. (*workplace*)

« véhicule de transport public » Y sont assimilés l'autobus scolaire et le véhicule utilisé pour le transport de passagers à titre onéreux. (*public transit vehicle*)

Règlement municipal, usage du tabac dans les lieux publics et les lieux de travail

(2) Le conseil peut, par règlement municipal, régir l'usage du tabac dans les lieux publics et les lieux de travail situés dans les limites de la municipalité et désigner des lieux publics ou des lieux de travail, ou des catégories ou parties de tels lieux, comme des lieux où sont interdits l'usage du tabac et le fait d'avoir sur soi du tabac allumé.

Portée du règlement municipal

(3) Le règlement municipal pris en vertu du paragraphe (2) peut :

a) aux fins de son application, définir « lieu public » et « lieu de travail »;

b) exiger des propriétaires ou occupants d'un lieu désigné dans le règlement municipal qu'ils placent des affiches faisant mention de l'interdiction ou de tout autre renseignement portant sur l'usage du tabac comme l'exige le règlement municipal;

c) prescrire la forme, le contenu et l'emplacement des affiches visées à l'alinéa b), de même que la façon de les placer;

d) permettre aux propriétaires ou occupants d'un lieu désigné dans le règlement municipal de réserver, dans ce lieu, une zone à l'usage du tabac qui respecte les critères prévus dans le règlement municipal;

e) prévoir les critères qui s'appliquent aux zones réservées à l'usage du tabac visées à l'alinéa d), y compris les normes relatives à la ventilation dans ces zones;

f) prescrire que les zones réservées à l'usage du tabac dans les lieux désignés dans le règlement municipal doivent être identifiées comme des zones où il est permis de fumer;

g) exiger des employeurs d'un lieu de travail ou des propriétaires ou occupants d'un lieu public qu'ils veillent à l'observation du règlement municipal.

Lieux publics

(4) Indépendamment de la définition qu'il contient d'un « lieu public », le règlement municipal pris en vertu du paragraphe (2) ne peut s'appliquer à une rue, un chemin ou une route.

Inspecteurs

(5) La municipalité peut nommer des inspecteurs pour l'application du règlement municipal pris en vertu du paragraphe (2).

Entrée sans mandat

(6) Pour déterminer si le règlement municipal est observé, un inspecteur peut, à toute heure raisonnable, pénétrer sans mandat dans les lieux publics et les lieux de travail désignés dans le règlement municipal.

Logements

(7) Malgré le paragraphe (6), l'inspecteur ne peut exercer son pouvoir afin de pénétrer dans un endroit, ou dans la partie d'un endroit, qui sert de logement sauf si :

a) l'occupant du logement consent à laisser entrer l'inspecteur après que celui-ci l'a informé de son droit de refuser son consentement;

b) le pouvoir est exercé en vertu d'un mandat délivré en vertu du présent article, dans le cas où l'occupant refuse son consentement.

Pouvoirs de l'inspecteur

(8) L'inspecteur peut procéder aux interrogatoires et aux enquêtes et faire les demandes de renseignements qui sont nécessaires pour déterminer si le règlement municipal est observé.

Entrave

(9) Il est interdit d'entraver le travail d'un inspecteur qui effectue une inspection en vertu du présent article.

Mandat

(10) Le juge de la Cour de justice du Nunavut ou le juge de paix qui est convaincu, à la lumière des renseignements qui lui sont présentés sous serment, qu'il existe des motifs raisonnables de croire qu'un mandat est nécessaire pour permettre à un inspecteur d'exercer les pouvoirs qu'un règlement municipal pris en vertu du présent article lui confère, peut décerner un mandat autorisant l'inspecteur et toute autre personne que le mandat désigne à pénétrer dans un endroit, y compris un endroit qui sert de logement, pour y effectuer, sous réserve des conditions précisées dans le mandat, l'inspection prévue dans le règlement municipal.

Avis

(11) La demande visée au paragraphe (10) peut être faite sans en aviser l'occupant, le propriétaire ou quiconque est concerné.

Usage de la force

(12) L'inspecteur peut recourir à la force qui est raisonnablement nécessaire pour l'exécution du mandat et peut faire appel aux agents de la paix afin de l'assister dans le cadre de cette exécution.

Infraction

(13) Quiconque contrevient au paragraphe (9) est coupable d'une infraction.

Gouvernement lié

(14) Le présent article lie le gouvernement du Nunavut.

Incompatibilité

(15) En cas d'incompatibilité entre une disposition d'un règlement municipal pris par le conseil en vertu du présent article et une disposition d'une loi ou d'un règlement, la disposition qui limite le plus l'usage du tabac l'emporte.

ABROGATION

Abrogation

27. Les alinéas 13(4)a) et 14(5)a) sont abrogés à la date du second anniversaire de leur entrée en vigueur.

ENTRÉE EN VIGUEUR

Entrée en vigueur

28. La présente loi ou telle de ses dispositions entre en vigueur à la date ou aux dates fixées par décret du commissaire.

The Tobacco Control Act

being

Chapter T-14.1 of the *Statutes of Saskatchewan, 2001* (effective March 11, 2002) as amended by *Statutes of Saskatchewan*, 2002, c.C-11.1 and R-8.2; and 2003, c.15.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER T-14.1

An Act to Control the Sale and Use of Tobacco and Tobacco-related Products and to make consequential amendments to certain other Acts

PART I
Preliminary Matters

Short title

1 This Act may be cited as *The Tobacco Control Act*.

Interpretation

2 In this Act:

(a) **"department"** means the department over which the minister presides;

(b) **"enclosed public place"** means all or any part of any building or other enclosed place that is open to the public or to which the public is customarily admitted or invited;

(c) **"furnish"** means to sell, lend, assign, give or send, with or without consideration, or to barter or deposit with another person for the performance of a service;

(d) **"minister"** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

(e) **Repealed.** 2002, c.C-11.1, s.423.

(f) **"prescribed"** means prescribed in the regulations.

(g) **"retailer"** means a person who is engaged in a business that includes the sale of tobacco or tobacco-related products to the public;

(h) **"sell"** includes offer for sale and expose for sale;

(i) **"tobacco"** means tobacco in any form in which it is used or consumed, and includes snuff and raw leaf tobacco, but does not include any food, drug or device that contains nicotine to which the *Food and Drugs Act* (Canada) applies;

(j) **"tobacco enforcement officer"** means:

(i) a person designated as a tobacco enforcement officer pursuant to section 16;

(ii) a member of a police service as defined in *The Police Act, 1990*; or

(iii) a member of the Royal Canadian Mounted Police;

(k) **"tobacco-related product"** means a cigarette paper, a cigarette tube, a cigarette filter, a cigarette maker, a pipe or any other product used in association with tobacco that is prescribed;

(l) **"young person"** means a person under the age of 18 years.

2001, c.T-14.1, s.2; 2002, c.C-11.1, s.413.

Crown bound

3 This Act binds the Crown.

2001, c.T-14.1, s.3.

PART II
Transactions involving Tobacco or Tobacco-related Products

Furnishing tobacco to young persons prohibited

4(1) No person shall furnish tobacco or a tobacco-related product to a young person.

(2) No person shall furnish tobacco or a tobacco-related product to a person who appears to be a young person unless the person produces, as proof that he or she is 18 years of age or older:

(a) a photo identification card that forms part of a Saskatchewan driver's licence;

(b) a Canadian passport;

(c) a certificate of Canadian citizenship that contains the person's photograph;

(d) a Canadian Forces identification card;

(e) any other document that:

(i) is issued by the government of a province or territory of Canada, the Government of Canada or the government of a foreign country or state; and

(ii) contains the person's photograph, date of birth and signature; or

(f) a prescribed document.

(3) No person shall furnish tobacco or a tobacco-related product to a person who produces a document mentioned in subsection (2) as proof that he or she is 18 years of age or older if it appears that the document has been altered.

(4) Nothing in this section prevents a legal custodian of a young person from furnishing tobacco or a tobacco-related product to the young person in a place other than a public place or a place to which the public ordinarily has access.

(5) Nothing in this section prevents a person from giving tobacco or a tobacco-related product to a young person if the gift is made solely for use in traditional Aboriginal spiritual or cultural practices or ceremonies.

2001, c.T-14.1, s.4.

Sale of cigarettes in small quantities prohibited

5 No person shall sell cigarettes unless the cigarettes are in a package that contains no fewer than 20 cigarettes.

2001, c.T-14.1, s.5.

Certain sales promotion practices prohibited

6(1) No person shall advertise or promote tobacco or tobacco-related products in any place or premises in which tobacco or tobacco-related products are sold if young persons are permitted access to the place or premises.

(2) No person shall advertise or promote tobacco or tobacco-related products by means of an advertisement or promotional material placed in the windows of any place or premises in which tobacco or tobacco-related products are sold if the advertisement or promotional material is placed so that it is visible from the outside of the place or premises.

(3) No retailer shall permit tobacco or tobacco-related products to be displayed in the retailer's business premises so that the tobacco or tobacco-related products are visible to the public if young persons are permitted access to those premises.

2001, c.T-14.1, s.6.

Unauthorized signs prohibited, display of supplied signs required

7(1) 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 in Saskatchewan or health warnings respecting tobacco unless the sign:

(a) is a sign supplied or approved by the department; or

(b) is otherwise authorized pursuant to the *Tobacco Act* (Canada).

(2) No retailer shall fail to display in the retailer's premises any sign supplied by the department respecting the legal age to purchase tobacco or tobacco-related products in Saskatchewan or health warnings respecting tobacco.

2001, c.T-14.1, s.7.

Sale in certain places prohibited

8 No person shall sell tobacco or tobacco-related products in any of the following places or premises:

(a) a school or a registered independent school as defined in *The Education Act, 1995*;

(b) a facility or place operated by a regional health authority or an affiliate, as defined in *The Regional Health Services Act*;

(c) a health facility as defined in *The Health Facilities Licensing Act*;

(d) a special-care home as defined in *The Housing and Special-care Homes Act*;

(e) a facility as defined in *The Mental Health Services Act*;

(f) a community clinic mentioned in subsection 63(2) of *The Regional Health Services Act*; or

(g) a prescribed place.

2001, c.T-14.1, s.8; 2002, c.R-8.2, s.97.

Vending machines in certain places prohibited

9(1) In this section, **"proprietor"** means, with respect to a place or premises, the person who owns or occupies the place or premises.

(2) Subject to subsection (3):

(a) no proprietor shall permit a vending machine that dispenses tobacco or tobacco-related products to be located in the proprietor's place or premises; and

(b) no person shall place, or cause to be placed, a vending machine that dispenses tobacco or tobacco-related products in any place or premises.

(3) A vending machine that dispenses tobacco or tobacco-related products may be located:

(a) in a place or premises to which the public is not permitted access; or

(b) in a place or premises to which the public is permitted access if:

(i) young persons are not permitted to enter the place or premises; and

(ii) the vending machine is located:

(A) not less than a prescribed distance from any entrance to the place or premises; and

(B) in a position that permits the proprietor or employees of the proprietor to monitor the use of the vending machine.

2001, c.T-14.1, s.9.

PART III
Protection against Environmental Tobacco Smoke

Interpretation of Part

10(1) In this Part:

(a) **"bingo establishment"** means the portion of an enclosed place or premises for which a bingo licence has been issued by the Liquor and Gaming Authority;

(b) **"casino"** means:

(i) a casino as defined in *The Saskatchewan Gaming Corporation Act*; or

(ii) an enclosed place or premises for which a casino licence has been issued by the Liquor and Gaming Authority;

(c) **"designated non-smoking area"** means an area within a casino, restaurant, tavern, bingo establishment, bowling centre or billiard hall that is designated pursuant to clause 12(2)(a) as an area in which smoking and holding lighted tobacco are prohibited;

(d) **"proprietor"**:

(i) with respect to a place or premises, means a person who controls, governs or directs the activities carried on within the place or premises, and includes a person who is actually in charge of the place or premises at any particular time; and

(ii) with respect to a vehicle, means the registered owner of the vehicle or the operator in charge of the vehicle at any particular time;

(e) **"restaurant"** means an enclosed place or premises for which a public eating establishment licence has been issued pursuant to *The Public Health Act, 1994*;

(f) **"tavern"** means the portion of an enclosed place or premises for which a tavern permit has been issued pursuant to *The Alcohol and Gaming Regulation Act, 1997*.

(2) Provisions of this Act or the regulations that mention places, premises or vehicles of the following types apply to them only during the periods in which the activity that characterizes the place, premises or vehicle is being carried on:

(a) bingo establishments;

(b) casinos;

(c) taverns;

(d) any prescribed places, premises or vehicles.

2001, c.T-14.1, s.10; 2003, c.15, s.19.

Smoking in certain places prohibited

11(1) Subject to subsection (3), no person shall smoke or hold lighted tobacco in an enclosed public place to which young persons are ordinarily permitted access.

(2) Without limiting the generality of subsection (1), no person shall smoke or hold lighted tobacco in the following places or premises:

(a) a building occupied by a school or a registered independent school as defined in *The Education Act, 1995*;

(b) a building or portion of a building occupied by:

(i) the University of Regina, the University of Saskatchewan or any college federated or affiliated with either of them;

(ii) the Saskatchewan Institute of Applied Science and Technology;

(iii) the Saskatchewan Indian Institute of Technologies;

(iv) a regional college as defined in *The Regional Colleges Act*;

(v) a private vocational school as defined in *The Private Vocational Schools Regulation Act, 1995*; or

(vi) any other post-secondary educational institution;

(c) a facility operated by, or an enclosed place or premises occupied by, a regional health authority or an affiliate, as defined in *The Regional Health Services Act*, other than a facility other than a facility mentioned in clause (e);

(d) a health facility as defined in *The Health Facilities Licensing Act*;

(e) subject to subsection (3), a special-care home as defined in *The Housing and Special-care Homes Act*;

(f) subject to subsection (3), a personal care home, as defined in *The Personal Care Homes Act*, that offers care and accommodation to more than 10 persons;

(g) a facility as defined in *The Mental Health Services Act*;

(h) a community clinic mentioned in subsection 63(2) of *The Regional Health Services Act*;

(i) subject to subsection (3), a facility as defined in *The Child Care Act*;

(j) a building or portion of a building occupied by:

(i) the Government of Saskatchewan or any of its Crown corporations, boards, commissions or other agencies;

(ii) the Government of Canada or any of its Crown corporations, boards, commissions or other agencies;

(iii) a municipality;

(k) a public library;

(l) any portion of an office building, retail store or other business or commercial establishment to which the public is ordinarily permitted access;

(m) a video arcade, an enclosed amusement centre or a theatre;

(n) a vehicle used for public transit or a commercial vehicle for hire that is used to transport members of the public;

(o) an outdoor bus shelter;

(p) a designated non-smoking area;

(q) a prescribed place, premises or vehicle.

(3) Subsections (1) and (2) do not apply to:

(a) a separate enclosed ventilated place within a special-care home mentioned in clause (2)(e) or a personal care home mentioned in clause (2)(f) that meets the prescribed requirements;

(b) a facility mentioned in clause (2)(i) that is a group family child care home or a licensed family child care home during the times in which no child care services are being provided in the facility;

(c) any portion of a place or premises mentioned in subsection 12(1) that is not included within a designated non-smoking area;

(d) an enclosed public place while it is being used, with the consent of the proprietor, for traditional Aboriginal spiritual or cultural practices or ceremonies, if the use of tobacco or tobacco-related products is an integral part of the traditional Aboriginal spiritual or cultural practices or ceremonies being carried out in that enclosed public place; or

(e) a prescribed place, premises or vehicle.

2001, c.T-14.1, s.11; 2002, c.R-8.2, s.97.

Designated non-smoking areas

12(1) This section applies with respect to places or premises operated as:

(a) billiard halls;

(b) bingo establishments;

(c) bowling centres;

(d) casinos;

(e) restaurants; and

(f) taverns.

(2) Every proprietor of a place or premises mentioned in subsection (1) shall:

(a) ensure that:

(i) on and after January 1, 2002, an area that is not less than 30% of the public area of the place or premises is designated as an area in which smoking or holding lighted tobacco is prohibited;

(ii) on and after January 1, 2003, an area that is not less than 40% of the public area of the place or premises is designated as an area in which smoking or holding lighted tobacco is prohibited;

(iii) on and after January 1, 2004, an area that is not less than 60% of the public area of the place or premises is designated as an area in which smoking or holding lighted tobacco is prohibited; and

(b) prohibit persons from smoking or holding lighted tobacco in the designated non-smoking areas.

2001, c.T-14.1, s.12.

Signs required

13 Every proprietor of a place or premises to which section 11 applies shall ensure that signs containing a statement respecting the prohibition against smoking or holding lighted tobacco are posted at the place or premises in accordance with the regulations.

2001, c.T-14.1, s.13.

Ashtrays, etc., prohibited

14(1) Subject to subsection (2), every proprietor of a place or premises to which section 11 applies shall ensure that ashtrays and similar products associated with the use of tobacco are not available for use in the place or premises, except as permitted by the regulations.

(2) In the case of a place or premises to which section 12 applies, subsection (1) applies only with respect to the designated non-smoking area within the place or premises.

2001, c.T-14.1, s.14.

Restrictive provision prevails

15 If there is a conflict between section 11, 12, 13 or 14 of this Act and a provision of any other Act, any regulation or any bylaw of a municipality, the provision that is more restrictive prevails.

2001, c.T-14.1, s.15.

PART IV
Administration and Enforcement

Appointment of tobacco enforcement officers

16(1) The minister may:

(a) designate persons to act as tobacco enforcement officers for the purposes of this Act; and

(b) in designating a person pursuant to clause (a), impose any restrictions on the powers of the person that the minister considers appropriate.

(2) A tobacco enforcement officer designated pursuant to subsection (1) who enters a place or premises for the purposes of this Act must, on request, show evidence of his or her designation to the person in charge of the place or premises.

2001, c.T-14.1, s.16.

Powers of tobacco enforcement officers

17(1) In this section, **"record"** includes any information that is recorded or stored in any form by means of any device or medium.

(2) For the purposes of administering and enforcing this Act and the regulations, a tobacco enforcement officer may:

(a) subject to subsections (3) and (4), at any reasonable time, enter and inspect any place or premises where:

(i) tobacco or tobacco-related products are sold at retail or wholesale;

(ii) vending machines that dispense or are capable of dispensing tobacco or tobacco-related products are located;

(iii) the sale of tobacco or tobacco-related products is prohibited pursuant to this Act; or

(iv) smoking or holding lighted tobacco is prohibited pursuant to this Act;

(b) make any inspection, investigation or inquiry that the tobacco enforcement officer considers necessary;

(c) subject to subsections (3) and (4), at any reasonable time, enter any place or premises containing any records or property that are required to be kept pursuant to this Act or the regulations or that relate to the sale of tobacco or tobacco-related products, and inspect those records or that property;

(d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems or other devices or systems that are ordinarily used in carrying on business at the place or premises;

(e) make a copy of any records described in clause (c) or, if the tobacco enforcement officer is unable to make a satisfactory copy, after giving a receipt remove and retain the records for any period the tobacco enforcement officer considers reasonable;

(f) investigate an allegation that a contravention of this Act or the regulations has occurred and question any person for the purpose of that investigation;

(g) engage the services of young persons for the purpose of making test purchases to investigate whether a person is selling tobacco or tobacco-related products to young persons;

(h) require any person in control or immediate charge of a vending machine that is capable of dispensing tobacco or tobacco-related products to open the machine for inspection;

(i) seize any tobacco, tobacco-related product, vending machine that is capable of dispensing tobacco or tobacco-related products, the contents of a vending machine that is capable of dispensing tobacco or tobacco-related products or any other substance or thing that a tobacco enforcement officer believes, on reasonable grounds, constitutes evidence of a contravention of this Act or the regulations; and

(j) with respect to a person who is in the premises of a retailer and to whom the tobacco enforcement officer believes tobacco or tobacco-related products may have been furnished:

(i) ask the person for proof of his or her age; and

(ii) make other inquiries of the person.

(3) Subject to subsection (4), a tobacco enforcement officer shall not enter a private dwelling without the consent of the occupier or a warrant obtained pursuant to *The Summary Offences Procedure Act, 1990*.

(4) During the hours in which child care services are being provided, a tobacco enforcement officer may enter a group family child care home or a licensed family child care home for the purposes of subclause (2)(a)(iv) without the consent of the occupier or a warrant obtained pursuant to *The Summary Offences Procedure Act, 1990*.

2001, c.T-14.1, s.17.

Obstruction, false statement, etc., prohibited

18(1) No person shall obstruct a tobacco enforcement officer who is acting pursuant to the authority of this Act or the regulations.

(2) No person shall knowingly make a false or misleading statement to a tobacco enforcement officer or produce a false document or thing to a tobacco enforcement officer.

2001, c.T-14.1, s.18.

Sign removal, alteration, etc., prohibited

19 No person shall remove, cover up, mutilate, deface or alter any sign required pursuant to this Act or the regulations to be displayed or posted.

2001, c.T-14.1, s.19.

PART V
Offences and Penalties

Offences pursuant to Part II

20(1) Every person who contravenes a provision of section 4, 5, 6, 7, 8 or 9 is guilty of an offence and liable on summary conviction:

(a) for a first offence, to a fine of not more than $3,000;

(b) for a second offence, to a fine of not more than $5,000;

(c) for a third offence, to a fine of not more than $15,000; and

(d) for a fourth or subsequent offence, to a fine of not more than $50,000.

(2) It is not a defence to a prosecution for a contravention of section 4 for the person accused of furnishing tobacco or a tobacco-related product to a young person to show that the young person appeared to be 18 years of age or older.

2001, c.T-14.1, s.20.

Evidence of previous convictions

21 A certificate of a previous conviction purporting to be under the hand of the convicting judge, a local registrar of the Court of Queen's Bench or a clerk of the Provincial Court of Saskatchewan is admissible, in the absence of evidence to the contrary, as proof of the facts stated in the certificate without proof of signature or official character.

2001, c.T-14.1, s.21.

Convictions pursuant to *Tobacco Act* (Canada)

22 Where a retailer is convicted of an offence arising from a contravention of section 8 of the *Tobacco Act* (Canada), the conviction pursuant to the *Tobacco Act* (Canada) is deemed to be a conviction pursuant to subsection 20(1) for the purposes of determining any applicable penalty pursuant to subsection 20(1) or 23(1) for a contravention of section 4.

2001, c.T-14.1, s.22.

Prohibition order - repeat offences by retailer

23(1) Where a retailer is convicted of a second or subsequent offence pursuant to subsection 20(1) for a contravention of section 4, the convicting judge shall also make an order:

(a) prohibiting the retailer or any successor to the retailer from keeping or furnishing tobacco or tobacco-related products at the place or premises at which the offence took place or at any place or premises to which the business of the retailer or the retailer's successor is moved:

(i) for a period of seven days from the date of conviction in the case of a second offence;

(ii) for a period of six months from the date of conviction in the case of a third offence; and

(iii) for a period of one year from the date of conviction in the case of a fourth or subsequent offence; and

(b) requiring the retailer or any successor to the retailer to post clearly visible signs that:

(i) meet the requirements of the regulations; and

(ii) state that the retailer or successor to the retailer is prohibited from keeping or furnishing tobacco or tobacco-related products at the place or premises for the period specified in the order.

(2) An order made pursuant to clause (1)(a) does not prevent the keeping of small amounts of tobacco or tobacco-related products for the immediate personal use of persons who work in the place or premises.

2001, c.T-14.1, s.23.

Offence - contravention of order

24 Every person who contravenes an order made pursuant to subsection 23(1) is guilty of an offence and liable on summary conviction to a fine of not more than:

(a) $5,000 in the case of an order with respect to an offence mentioned in subclause 23(1)(a)(i) and, in the case of a continuing offence, to a further fine of not more than $5,000 for each day or part of a day during which the offence continues;

(b) $15,000 in the case of an order with respect to an offence mentioned in subclause 23(1)(a)(ii) and, in the case of a continuing offence, to a further fine of not more than $15,000 for each day or part of a day during which the offence continues; or

(c) $50,000 in the case of an order with respect to an offence mentioned in subclause 23(1)(a)(iii) and, in the case of a continuing offence, to a further fine of not more than $50,000 for each day or part of a day during which the offence continues.

2001, c.T-14.1, s.24.

Offences pursuant to Parts III and IV

25(1) Every person who contravenes a provision of section 11 of this Act is guilty of an offence and liable on summary conviction to a fine of not more than $500.

(2) Every person who contravenes a provision of section 12, 13 or 14 of this Act is guilty of an offence and liable on summary conviction to a fine of not more than $5,000.

(3) Every person who contravenes a provision of section 18 or 19 of this Act is guilty of an offence and liable on summary conviction to a fine of not more than $3,000.

2001, c.T-14.1, s.25.

Directors, etc., of corporations

26 Every director, officer or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in an act or omission of the corporation that would constitute an offence by the corporation is guilty of that offence, and is liable on summary conviction to the penalties provided for the offence whether or not the corporation has been prosecuted or convicted.

2001, c.T-14.1, s.26.

Vicarious liability

27 In a prosecution for an offence pursuant to this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted or convicted for the offence, unless the accused establishes that the offence was committed without his or her knowledge and that the accused exercised all due dilegence to prevent its commission.

2001, c.T-14.1, s.27.

Evidence

28 In a prosecution for an offence pursuant to this Act, the trial judge may infer that any substance or object in question is tobacco or a tobacco-related product within the meaning of this Act from the fact that a witness describes it as tobacco or a tobacco-related product or by a name that is commonly applied to tobacco or a tobacco-related product.

2001, c.T-14.1, s.28.

Disposition of property seized

29(1) Where a person is convicted of a contravention of section 9, any money that was found in a vending machine capable of dispensing tobacco or tobacco-related products and that was seized in relation to the contravention is forfeited to the Crown.

(2) Subject to subsection (1), where a person is convicted of any offence pursuant to this Act, the convicting judge may make any order for the disposition of any substance or thing seized in relation to the contravention that the judge considers appropriate.

2001, c.T-14.1, s.29.

PART VI
General

Regulations

30 For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:

(a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;

(b) for the purposes of clause 2(k), prescribing products as tobacco-related products;

(c) for the purposes of clause 4(2)(f), prescribing documents that may be used as proof of age;

(d) for the purposes of clause 8(g), prescribing places or premises in which the sale of tobacco or tobacco-related products is prohibited;

(e) for the purposes of paragraph 9(3)(b)(ii)(A), prescribing the minimum distance from an entrance at which a vending machine may be located;

(f) for the purposes of clause 10(2)(d), prescribing places, premises and vehicles to which provisions of this Act or the regulations apply only during the periods in which the activity that characterizes the place, premises or vehicle is being carried on;

(g) for the purposes of clause 11(2)(q), prescribing places, premises and vehicles in which no person shall smoke or hold lighted tobacco;

(h) for the purposes of clause 11(3)(a), prescribing requirements for separate enclosed ventilated places within special-care homes or personal care homes;

(i) for the purposes of clause 11(3)(e), prescribing places, premises and vehicles to which subsections 11(1) and (2) do not apply;

(j) for the purposes of section 13, governing signs to be posted respecting the prohibition against smoking or holding lighted tobacco;

(k) for the purposes of subsection 14(1), authorizing and governing the provision of ashtrays or similar products in places or premises;

(l) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;

(m) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2001, c.T-14.1, s.30.

Non-liability

31 No action or proceeding lies or shall be commenced against the minister, the department, a tobacco enforcement officer, an employee or agent of the department or any other person appointed to administer all or any of the provisions of this Act or the regulations for any loss or damage suffered by any person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done, by any of them pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Act or the regulations.

2001, c.T-14.1, s.31.

R.S.S. 1978, c.M-20 repealed

32 *The Minors Tobacco Act* is repealed.

2001, c.T-14.1, s.32.

S.S. 1983, c.N-5.1, new section

33 *The Northern Municipalities Act* is amended by adding the following section after section 108:

"Smoking

108.1(1) In this section, **'enclosed public place'** means all or any part of any building or other enclosed place that is open to the public or to which the public is customarily admitted or invited.

(2) Subject to *The Tobacco Control Act*, a council may, by bylaw, prohibit, control or regulate the following activities in any enclosed public place or public transit vehicle:

(a) the lighting of any cigar, cigarette, pipe or other smoking device;

(b) the carrying or smoking of any lighted cigar, cigarette, pipe or other smoking device.

(3) For the purposes of subsection (2), the power to prohibit, control or regulate includes the following powers:

(a) to establish categories and subcategories of enclosed public places and public transit vehicles;

(b) to establish different prohibitions, controls or regulatory requirements for different categories and subcategories;

(c) to exempt any enclosed public place or public transit vehicle or any category or subcategory of enclosed public places or public transit vehicles from all or any part of a bylaw".

2001, c.T-14.1, s.33.

S.S. 1994, c.P-37.1 amended

34(1) *The Public Health Act* is amended in the manner set forth in this section.

(2) The following subsection is added after subsection 46(2):

"(3) Nothing in this section authorizes the enactment of regulations respecting the use of tobacco or tobacco-related products as defined in *The Tobacco Control Act*".

(3) The following subsection is added after subsection 47(2):

"(3) Nothing in this section authorizes the enactment of bylaws respecting the use of tobacco or tobacco-related products as defined in *The Tobacco Control Act*".

(4) The following subsection is added after subsection 48(2):

"(3) Nothing in this section authorizes the enactment of bylaws respecting the use of tobacco or tobacco-related products as defined in *The Tobacco Control Act*".

(5) Section 50 is amended:

(a) in subsection (3) by adding "but subject to subsection (3.1)" **after** "Notwithstanding any other Act"; **and**

(b) by adding the following subsection after subsection (3):

"(3.1) Subsection (3) does not apply to a bylaw made by a council of a municipality pursuant to section 108.1 of *The Northern Municipalities Act*, section 215.1 of *The Rural Municipality Act, 1989* or section 142 of *The Urban Municipality Act, 1984*".

2001, c.T-14.1, s.34.

S.S. 1989-90, c.R-26.1, new section 215.1

35 Section 215.1 of *The Rural Municipality Act, 1989* is repealed and the following substituted:

"Smoking

215.1(1) In this section, **'enclosed public place'** means all or any part of any building or other enclosed place that is open to the public or to which the public is customarily admitted or invited.

(2) Subject to *The Tobacco Control Act*, a council may, by bylaw, prohibit, control or regulate the following activities in any enclosed public place or public transit vehicle:

(a) the lighting of any cigar, cigarette, pipe or other smoking device;

(b) the carrying or smoking of any lighted cigar, cigarette, pipe or other smoking device.

(3) For the purposes of subsection (2), the power to prohibit, control or regulate includes the following powers:

(a) to establish categories and subcategories of enclosed public places and public transit vehicles;

(b) to establish different prohibitions, controls or regulatory requirements for different categories and subcategories;

(c) to exempt any enclosed public place or public transit vehicle or any category or subcategory of enclosed public places or public transit vehicles from all or any part of a bylaw".

2001, c.T-14.1, s.35.

S.S. 1983-84, c.U-11, new section 142

36 Section 142 of *The Urban Municipality Act, 1984* is repealed and the following substituted:

"Smoking

142(1) In this section, **'enclosed public place'** means all or any part of any building or other enclosed place that is open to the public or to which the public is customarily admitted or invited.

(2) Subject to *The Tobacco Control Act*, a council may, by bylaw, prohibit, control or regulate the following activities in any enclosed public place or public transit vehicle:

(a) the lighting of any cigar, cigarette, pipe or other smoking device;

(b) the carrying or smoking of any lighted cigar, cigarette, pipe or other smoking device.

(3) For the purposes of subsection (2), the power to prohibit, control or regulate includes the following powers:

(a) to establish categories and subcategories of enclosed public places and public transit vehicles;

(b) to establish different prohibitions, controls or regulatory requirements for different categories and subcategories;

(c) to exempt any enclosed public place or public transit vehicle or any category or subcategory of enclosed public places or public transit vehicles from all or any part of a bylaw".

2001, c.T-14.1, s.36.

Coming into force

37 This Act comes into force on proclamation.

2001, c.T-14.1, s.37.

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The Tobacco Control Regulations

being

Chapter T-14.1 Reg 1 (effective March 11, 2002).

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER T-14.1 REG 1

The Tobacco Control Act

Title

1 These regulations may be cited as *The Tobacco Control Regulations.*

Interpretation

2 In these regulations, **"Act"** means *The Tobacco Control Act.*

22 Feb 2002 cT-14.1 Reg 1 s2.

Advertise and promote

3 For the purposes of section 6 of the Act, the phrase **"advertise or promote"** does not include the display of a magazine or other publication that contains tobacco advertising if the magazine or other publication:

(a) is displayed in such a way that the tobacco advertisement is not visible to the public; and

(b) meets any requirements set out in the *Tobacco Act* (Canada) or any regulations made pursuant to that Act.

22 Feb 2002 cT-14.1 Reg 1 s3.

Location of vending machines

4 For the purposes of paragraph 9(3)(b)(ii)(A) of the Act, where a vending machine that dispenses tobacco or tobacco-related products is located in a place or on premises to which the public is permitted access, the vending machine must be located not less than five metres from the innermost entrance to the place or premises.

22 Feb 2002 cT-14.1 Reg 1 s4.

Designated smoking room

5(1) In this section:

(a) **"designated smoking room"** means a separate enclosed ventilated place, mentioned in clause 11(3)(a) of the Act, within a special-care home or a personal care home;

(b) **"personal care home"** means a personal care home mentioned in clause 11(2)(f) of the Act;

(c) **"special-care home"** means a special-care home mentioned in clause 11(2)(e) of the Act.

(2) For the purposes of clause 11(3)(a) of the Act, a designated smoking room in a special-care home or personal care home:

(a) must be set aside exclusively as a smoking room;

(b) subject to subsection (3), must not be used for smoking by any person other than a resident or a person visiting a resident;

(c) must have a door that:

(i) is capable of sealing to prevent smoke from escaping into other parts of the special-care home or personal care home;

(ii) is equipped with a device that causes the door to close automatically; and

(iii) is kept closed at all times except when opened to permit entry or exit from the room; and

(d) must have a ventilation system that:

(i) prevents recirculation of air from the designated smoking room to any other part of the special-care home or personal care home;

(ii) provides a continuous supply of fresh air into the designated smoking room;

(iii) is capable of replacing the air volume in the designated smoking room at least 12 times per hour; and

(iv) exhausts the air from the designated smoking room directly to the exterior of the special-care home or personal care home.

(3) Where a designated smoking room is located in a personal care home in which the licensee of the home resides, the licensee and persons who reside with the licensee in the home may also use the designated smoking room.

(4) For the purposes of subsection 14(1) of the Act, the use of safety ashtrays is permitted in a designated smoking room of a personal care home or special-care home.

22 Feb 2002 cT-14.1 Reg 1 s5.

Signs

6(1) For the purposes of section 13 of the Act, **"statement respecting the prohibition against smoking or holding lighted tobacco"** includes a depiction of the international no smoking symbol as set out in the Appendix.

(2) Subject to subsection (4), a sign that is required to be posted pursuant to section 13 of the Act:

(a) must be at least 12.7 centimetres wide and 12.7 centimetres high;

(b) must contain the international no smoking symbol as set out in the Appendix, in a form that is at least nine centimetres in diameter; and

(c) subject to subsection (3), must be posted:

(i) at each entrance to the place or premises;

(ii) in each seating and waiting area of the place or premises; and

(iii) in each public washroom located in the place or on the premises.

(3) A sign that is required to be posted pursuant to section 13 of the Act in a vehicle mentioned in clause 11(2)(n) of the Act must be posted in a place that is easily visible to passengers.

(4) Where a sign is required to be posted pursuant to section 13 of the Act in a place or premises mentioned in section 12 of the Act, every proprietor of a place or premises:

(a) must, in each designated non-smoking area required by subsection 12(2) of the Act, post a sufficient number of signs meeting the requirements of clauses (2)(a) and (b) to clearly mark the area; and

(b) must post a sign at each customer entrance that:

(i) meets the requirements of clauses (2)(a) and (b); and

(ii) contains the words "*no smoking in designated non-smoking areas*".

22 Feb 2002 cT-14.1 Reg 1 s6.

Posting sign required by prohibition order

7(1) When a retailer or any successor to the retailer is required to post clearly visible signs in accordance with clause 23(1)(b) of the Act, the signs:

(a) must be supplied by the department;

(b) must be posted from the time of commencement of operations on the day after the date of conviction and must be maintained in place until the end of the period specified in the order; and

(c) must be posted at each customer entrance to the place or premises at which the offence took place or to any place or premises to which the business of the retailer or the retailer's successor is moved.

(2) A sign mentioned in subsection (1):

(a) must contain the following message:

"*Notice - Tobacco and tobacco-related products cannot be sold at this location. We were convicted of selling to someone under 18*"; and

(b) must include the following information:

(i) the name and address of the retailer to which the prohibition order applies; and

(ii) the length of the prohibition order.

22 Feb 2002 cT-14.1 Reg 1 s7.

Coming into force

8(1) Subject to subsection (2), these regulations come into force on the day on which *The Tobacco Control Act* comes into force.

(2) If these regulations are filed with the Registrar of Regulations after the coming into force of *The Tobacco Control Act*, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

22 Feb 2002 cT-14.1 Reg 1 s8.

Appendix

[Subsection 6(1) and clause 6(2)(b)]

International No Smoking Symbol

22 Feb 2002 cT-14.1 Reg 1 Appendix.

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Convention-cadre de l'OMS pour la lutte antitabac

Préambule

Les Parties à la présente Convention,

Résolues à donner la priorité à leur droit de protéger la santé publique,

Reconnaissant que la propagation de l'épidémie de tabagisme est un problème mondial aux conséquences sérieuses pour la santé publique qui appelle la coopération internationale la plus large possible et la participation de tous les pays à une action internationale efficace, adaptée et globale,

Se faisant l'écho de l'inquiétude que suscitent dans la communauté internationale les conséquences sanitaires, sociales, économiques et environnementales dévastatrices au plan mondial de la consommation de tabac et de l'exposition à la fumée du tabac,

Gravement préoccupées par l'augmentation de la consommation et de la production mondiales de cigarettes et d'autres produits du tabac, en particulier dans les pays en développement, ainsi que par la charge que cela représente pour les familles, les pauvres et les systèmes de santé nationaux,

Reconnaissant que des données scientifiques ont établi de manière irréfutable que la consommation de tabac et l'exposition à la fumée du tabac sont cause de décès, de maladie et d'incapacité, et qu'il existe un décalage entre l'exposition à la cigarette et l'utilisation d'autres produits du tabac et l'apparition des maladies liées au tabac,

Reconnaissant également que les cigarettes et certains autres produits contenant du tabac sont des produits très sophistiqués, qui visent à engendrer et à entretenir la dépendance, qu'un grand nombre des composés qu'ils contiennent et que la fumée qu'ils produisent sont pharmacologiquement actifs, toxiques, mutagènes et cancérigènes, et que la dépendance à l'égard du tabac fait l'objet d'une classification distincte en tant que trouble dans les grandes classifications internationales des maladies,

Conscientes qu'il existe des données scientifiques montrant clairement que l'exposition prénatale à la fumée du tabac a des répercussions indésirables sur la santé et le développement des enfants,

Profondément préoccupées par la forte augmentation de la consommation de cigarettes et des autres formes d'usage du tabac chez les enfants et les adolescents dans le monde entier, et en particulier par le fait que ceux-ci commencent à fumer de plus en plus jeunes,

Inquiètes de l'augmentation de la consommation de cigarettes et des autres formes d'usage du tabac chez les femmes et les jeunes filles partout dans le monde, et ayant à l'esprit la nécessité d'une pleine participation des femmes à tous les niveaux de l'élaboration et de la mise en oeuvre des politiques ainsi que la nécessité de stratégies sexospécifiques de lutte antitabac,

Profondément préoccupées par les niveaux élevés de tabagisme et des autres formes de consommation du tabac par les peuples autochtones,

Sérieusement préoccupées par les effets de toutes les formes de publicité, de promotion et de parrainage visant à encourager l'usage des produits du tabac,

Reconnaissant qu'une action concertée est nécessaire pour éliminer toutes formes de commerce illicite des cigarettes et autres produits du tabac, y compris la contrebande, la fabrication illicite et la contrefaçon,

Reconnaissant que la lutte antitabac à tous les niveaux, et en particulier dans les pays en développement et les pays à économie en transition, exige des ressources financières et techniques suffisantes, proportionnelles aux besoins actuels et prévus des activités de lutte antitabac,

Reconnaissant la nécessité d'élaborer des mécanismes adaptés pour faire face aux répercussions sociales et économiques à long terme des stratégies de réduction de la demande de tabac,

Conscientes des difficultés économiques et sociales que les programmes de lutte antitabac peuvent engendrer à moyen et à long terme, dans certains pays en développement et pays à économie en transition, et reconnaissant qu'il leur faut une assistance technique et financière dans le cadre des stratégies de développement durable élaborées par eux,

Conscientes du travail très utile effectué par de nombreux Etats en matière de lutte antitabac et félicitant l'Organisation mondiale de la Santé de son rôle directeur, ainsi que les autres organisations et organismes du système des Nations Unies et les autres organisations intergouvernementales internationales et régionales des efforts déployés pour élaborer des mesures de lutte antitabac,

Soulignant la contribution particulière apportée par les organisations non gouvernementales et d'autres membres de la société civile sans liens avec l'industrie du tabac, y compris les associations de professionnels de la santé, les associations de femmes, de jeunes, de défenseurs de l'environnement et de consommateurs et les établissements d'enseignement et de santé, aux efforts de lutte antitabac aux niveaux national et international, et l'importance vitale de leur participation aux efforts nationaux et internationaux de lutte antitabac,

Reconnaissant la nécessité d'être vigilant face aux efforts éventuels de l'industrie du tabac visant à saper ou dénaturer les efforts de lutte antitabac et la nécessité d'être informé des activités de l'industrie du tabac qui ont des répercussions négatives sur les efforts de lutte antitabac,

Rappelant l'article 12 du Pacte international relatif aux droits économiques, sociaux et culturels, adopté par l'Assemblée générale des Nations Unies le 16 décembre 1966, qui énonce le droit de toute personne de jouir du meilleur état de santé physique et mentale qu'elle est capable d'atteindre,

Rappelant également le préambule de la Constitution de l'Organisation mondiale de la Santé, qui stipule que la possession du meilleur état de santé qu'il est capable d'atteindre constitue l'un des droits fondamentaux de tout être humain, quelles que soient sa race, sa religion, ses opinions politiques, sa condition économique ou sociale,

Résolues à promouvoir des mesures de lutte antitabac fondées sur les considérations scientifiques, techniques et économiques actuelles et pertinentes,

Rappelant que la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes adoptée par l'Assemblée générale des Nations Unies le 18 décembre 1979 dispose que les Etats Parties à ladite Convention prennent toutes les mesures appropriées pour éliminer la discrimination à l'égard des femmes dans le domaine des soins de santé,

Rappelant en outre que la Convention relative aux droits de l'enfant, adoptée par l'Assemblée générale des Nations Unies le 20 novembre 1989, dispose que les Etats Parties à ladite Convention reconnaissent le droit de l'enfant de jouir du meilleur état de santé possible,

Sont convenues de ce qui suit :

PARTIE I : INTRODUCTION

Article premier
Emploi des termes

Aux fins de la présente Convention :

a) On entend par « commerce illicite » toute pratique ou conduite interdite par la loi, relative à la production, l'expédition, la réception, la possession, la distribution, la vente ou l'achat, y compris toute pratique ou conduite destinée à faciliter une telle activité;

b) On entend par « organisation d'intégration économique régionale » une organisation composée de plusieurs Etats souverains, et à laquelle ses Etats Membres ont donné compétence sur un certain nombre de questions, y compris le pouvoir de

prendre des décisions ayant force obligatoire pour ses Etats Membres concernant ces questions[1];

c) On entend par « publicité en faveur du tabac et promotion du tabac » toute forme de communication, recommandation ou action commerciale ayant pour but, effet ou effet vraisemblable de promouvoir directement ou indirectement un produit du tabac ou l'usage du tabac;

d) On entend par « lutte antitabac » toute une série de stratégies de réduction de l'offre, de la demande et des effets nocifs visant à améliorer la santé d'une population en éliminant ou en réduisant sa consommation de produits du tabac et l'exposition de celle-ci à la fumée du tabac;

e) On entend par « industrie du tabac » les entreprises de fabrication et de distribution en gros de produits du tabac et les importateurs de ces produits;

f) On entend par « produits du tabac » des produits fabriqués entièrement ou partiellement à partir de tabac en feuilles comme matière première et destinés à être fumés, sucés, chiqués ou prisés;

g) On entend par « parrainage du tabac » toute forme de contribution à tout événement, activité ou personne, ayant pour but, effet ou effet vraisemblable de promouvoir directement ou indirectement un produit du tabac ou l'usage du tabac.

Article 2
Relations entre la présente Convention et d'autres accords et instruments juridiques

1. Afin de mieux protéger la santé humaine, les Parties sont encouragées à appliquer des mesures allant au-delà des dispositions de la Convention et de ses protocoles, et rien dans ces instruments n'empêche une Partie d'imposer des restrictions plus sévères si elles sont compatibles avec leurs dispositions et conformes au droit international.

2. Les dispositions de la Convention et de ses protocoles n'affectent en rien le droit d'une Partie de conclure des accords bilatéraux ou multilatéraux, y compris des accords régionaux ou sous-régionaux, sur les questions ayant trait à la Convention et à ses protocoles ou s'y rattachant, à condition que ces accords soient compatibles avec leurs obligations au titre de la Convention et de ses protocoles. La Partie concernée communique le texte de tels accords à la Conférence des Parties par l'intermédiaire du Secrétariat.

PARTIE II : OBJECTIF, PRINCIPES DIRECTEURS ET OBLIGATIONS GENERALES

Article 3
Objectif

L'objectif de la Convention et de ses protocoles est de protéger les générations présentes et futures des effets sanitaires, sociaux,

[1]Le cas échéant, « national » se rapporte également aux organisations d'intégration économique régionales.

environnementaux et économiques dévastateurs de la consommation de tabac et de l'exposition à la fumée du tabac en offrant un cadre pour la mise en oeuvre de mesures de lutte antitabac par les Parties aux niveaux national, régional et international, en vue de réduire régulièrement et notablement la prévalence du tabagisme et l'exposition à la fumée du tabac.

Article 4
Principes directeurs

Pour atteindre l'objectif de la présente Convention et de ses protocoles et en appliquer les dispositions, les Parties suivent notamment les principes directeurs énoncés ci-après :

1. Chacun doit être informé des conséquences pour la santé, du caractère dépendogène et du risque mortel de la consommation de tabac et de l'exposition à la fumée du tabac, et des mesures législatives, exécutives, administratives ou autres mesures efficaces doivent être envisagées au niveau gouvernemental approprié pour protéger tous les individus contre l'exposition à la fumée du tabac.

2. Un engagement politique fort est nécessaire pour élaborer et appuyer, aux niveaux national, régional et international, des mesures plurisectorielles complètes et des actions coordonnées, tenant compte :

a) de la nécessité de prendre des mesures pour protéger tous les individus contre l'exposition à la fumée du tabac;

b) de la nécessité de prendre des mesures pour éviter que les individus commencent à fumer, pour promouvoir et appuyer le sevrage et pour faire diminuer la consommation de produits du tabac sous toutes leurs formes;

c) de la nécessité de prendre des mesures pour encourager les autochtones et les communautés autochtones à participer à l'élaboration, à la mise en oeuvre et à l'évaluation de programmes de lutte antitabac qui soient socialement et culturellement adaptés à leurs besoins et à leur manière de voir; et

d) de la nécessité de prendre des mesures pour tenir compte des risques sexospécifiques lors de l'élaboration des stratégies de lutte antitabac.

3. La coopération internationale, et en particulier le transfert de technologie, de connaissances et d'aide financière et la fourniture de compétences connexes pour établir et mettre en oeuvre des programmes de lutte antitabac efficaces, tenant compte des facteurs culturels locaux ainsi que de facteurs sociaux, économiques, politiques et juridiques, est un élément important de la Convention.

4. Des mesures et des ripostes multisectorielles globales pour réduire la consommation de tous les produits du tabac aux niveaux national, régional et international sont essentielles afin de prévenir, conformément aux principes de la santé publique, l'incidence des maladies et l'incapacité et les décès prématurés provoqués par la consommation de tabac et l'exposition à la fumée du tabac.

5. Les questions relatives à la responsabilité, telles que déterminées par chaque Partie dans les limites de sa compétence, sont un élément important d'une lutte antitabac globale.

6. Il faut reconnaître et prendre en compte l'importance d'une assistance technique et financière pour faciliter la reconversion économique des cultivateurs de tabac ainsi que des travailleurs dont les moyens de subsistance sont gravement compromis par l'application de programmes de lutte antitabac dans les pays en développement Parties et dans les Parties à économie en transition dans le cadre de stratégies de développement durable élaborées au niveau national.

7. La participation de la société civile est essentielle pour atteindre l'objectif de la Convention et de ses protocoles.

Article 5
Obligations générales

1. Chaque Partie élabore, met en oeuvre, actualise et examine périodiquement des stratégies et des plans et programmes nationaux multisectoriels globaux de lutte antitabac conformément aux dispositions de la Convention et des protocoles auxquels elle est Partie.

2. A cette fin, chaque Partie en fonction de ses capacités :

   a) met en place ou renforce, et dote de moyens financiers, un dispositif national de coordination ou des points focaux nationaux pour la lutte antitabac; et

   b) adopte et applique des mesures législatives, exécutives, administratives et/ou autres mesures efficaces et coopère, le cas échéant, avec d'autres Parties afin d'élaborer des politiques appropriées pour prévenir et réduire la consommation de tabac, l'addiction nicotinique et l'exposition à la fumée du tabac.

3. En définissant et en appliquant leurs politiques de santé publique en matière de lutte antitabac, les Parties veillent à ce que ces politiques ne soient pas influencées par les intérêts commerciaux et autres de l'industrie du tabac, conformément à la législation nationale.

4. Les Parties coopèrent en vue de formuler des propositions de mesures, de procédures et de lignes directrices pour la mise en oeuvre de la Convention et des protocoles auxquels elles sont Parties.

5. Les Parties coopèrent, le cas échéant, avec les organisations intergouvernementales internationales et régionales et autres organismes compétents afin d'atteindre les objectifs de la Convention et des protocoles auxquels elles sont Parties.

6. Les Parties, dans les limites des moyens et des ressources dont elles disposent, coopèrent pour obtenir les ressources financières nécessaires à la mise en oeuvre efficace de la Convention par le canal de dispositifs de financement bilatéraux et multilatéraux.

PARTIE III : MESURES RELATIVES A LA REDUCTION DE LA DEMANDE DE TABAC

Article 6
Mesures financières et fiscales visant à réduire la demande de tabac

1. Les Parties reconnaissent que les mesures financières et fiscales sont un moyen efficace et important de réduire la consommation de tabac pour diverses catégories de la population, en particulier les jeunes.

2. Sans préjudice du droit souverain des Parties de déterminer et de fixer leur politique fiscale, chaque Partie doit tenir compte de ses objectifs nationaux de santé en ce qui concerne la lutte antitabac et adopte ou maintient, selon le cas, des mesures pouvant comprendre :

a) l'application de politiques fiscales et, le cas échéant, de politiques des prix concernant les produits du tabac afin de contribuer aux objectifs de santé visant à réduire la consommation de tabac; et

b) l'interdiction ou la restriction, selon le cas, de la vente aux voyageurs internationaux, et/ou de l'importation par eux, de produits du tabac en franchise de droits et de taxes.

3. Les Parties indiquent les taux de taxation des produits du tabac et les tendances de la consommation de tabac dans les rapports périodiques qu'elles soumettent à la Conférence des Parties, conformément à l'article 21.

Article 7
Mesures autres que financières visant à réduire la demande de tabac

Les Parties reconnaissent que l'application de mesures autres que financières globales est un moyen efficace et important de réduire la consommation de tabac. Chaque Partie adopte et applique des mesures législatives, exécutives, administratives ou autres mesures efficaces nécessaires pour s'acquitter de ses obligations au titre des articles 8 à 13 et coopère en tant que de besoin avec les autres Parties, directement ou à

travers les organismes internationaux compétents, en vue de les faire appliquer. La Conférence des Parties propose des directives appropriées pour l'application des dispositions contenues dans ces articles.

Article 8

Protection contre l'exposition à la fumée du tabac

1. Les Parties reconnaissent qu'il est clairement établi, sur des bases scientifiques, que l'exposition à la fumée du tabac entraîne la maladie, l'incapacité et la mort.

2. Chaque Partie adopte et applique, dans le domaine relevant de la compétence de l'Etat en vertu de la législation nationale, et encourage activement, dans les domaines où une autre compétence s'exerce, l'adoption et l'application des mesures législatives, exécutives, administratives et/ou autres mesures efficaces prévoyant une protection contre l'exposition à la fumée du tabac dans les lieux de travail intérieurs, les transports publics, les lieux publics intérieurs et, le cas échéant, d'autres lieux publics.

Article 9

Réglementation de la composition des produits du tabac

La Conférence des Parties, en consultation avec les organismes internationaux compétents, propose des directives pour les tests et l'analyse de la composition et des émissions des produits du tabac, et pour la réglementation de cette composition et de ces émissions. Chaque Partie adopte et applique, sous réserve de l'approbation des autorités nationales compétentes, des mesures législatives, exécutives, administratives ou autres mesures efficaces concernant ces tests et analyses et cette réglementation.

Article 10

Réglementation des informations sur les produits du tabac à communiquer

Chaque Partie, dans le respect de son droit national, adopte et applique des mesures législatives, exécutives, administratives ou autres mesures efficaces exigeant des fabricants et des importateurs de produits du tabac qu'ils communiquent aux autorités gouvernementales les informations relatives à la composition et aux émissions des produits du tabac. Chaque Partie adopte et applique en outre des mesures efficaces pour que soient communiquées au public des informations sur les constituants toxiques des produits du tabac et les émissions qu'ils sont susceptibles de produire.

Article 11

Conditionnement et étiquetage des produits du tabac

1. Chaque Partie, dans les trois ans suivant l'entrée en vigueur de la Convention en ce qui la concerne, adopte et applique conformément à sa législation nationale des mesures efficaces pour faire en sorte que :

a) le conditionnement et l'étiquetage des produits du tabac ne contribuent pas à la promotion d'un produit du tabac par des moyens fallacieux, tendancieux ou trompeurs, ou susceptibles de donner une impression erronée quant aux caractéristiques, effets sur la santé, risques ou émissions du produit, y compris des termes, descriptifs, marques commerciales, signes figuratifs ou autres qui donnent directement ou indirectement l'impression erronée qu'un produit du tabac particulier est moins nocif que d'autres, comme par exemple des termes tels que « à faible teneur en goudrons », « légère », « ultra-légère » ou « douce »; et

b) chaque paquet ou cartouche de produits du tabac et toutes les formes de conditionnement et d'étiquetage extérieurs de ces produits portent également des mises en garde sanitaires décrivant les effets nocifs de la consommation de tabac et peuvent inclure d'autres messages appropriés. Ces mises en garde et messages

i) sont approuvés par l'autorité nationale compétente,

ii) sont utilisés tour à tour,

iii) de grande dimension, clairs, visibles et lisibles,

iv) devraient couvrir 50 % ou plus des faces principales mais pas moins de 30 %,

v) peuvent se présenter sous la forme de dessins ou de pictogrammes ou inclure de tels dessins ou pictogrammes.

2. Chaque paquet et cartouche de produits du tabac et toutes les formes de conditionnement et d'étiquetage extérieurs de ces produits, outre les mises en garde visées au paragraphe 1.b) du présent article, portent des informations sur les constituants et émissions pertinents des produits du tabac tels que définis par les autorités nationales.

3. Chaque Partie exige que les mises en garde et autres informations textuelles visées au paragraphe 1.b) et au paragraphe 2 du présent article apparaissent sur chaque paquet et cartouche de produits du tabac et sur toutes les formes de conditionnement et d'étiquetage extérieurs de ces produits dans sa ou ses langues principales.

4. Aux fins du présent article, l'expression « conditionnement et étiquetage extérieurs », à propos des produits du tabac, s'entend de toutes les formes de conditionnement et d'étiquetage utilisées dans la vente au détail du produit.

Article 12
Education, communication, formation et sensibilisation du public

Chaque Partie s'efforce de promouvoir et de renforcer la sensibilisation du public aux questions ayant trait à la lutte antitabac, en utilisant, selon qu'il conviendra, tous les outils de communication disponibles. A cette fin, chaque Partie adopte et applique des mesures législatives, exécutives, administratives ou autres mesures efficaces pour favoriser :

a) un large accès à des programmes efficaces et complets d'éducation et de sensibilisation du public aux risques sanitaires, y compris les caractéristiques dépendogènes de la consommation de tabac et de l'exposition à la fumée du tabac;

b) la sensibilisation du public aux risques pour la santé liés à la consommation de tabac et à l'exposition à la fumée du tabac, ainsi qu'aux avantages du sevrage tabagique et des modes de vie sans tabac, ainsi que le stipule l'article 14.2;

c) l'accès du public, conformément à la législation nationale, à un large éventail d'informations concernant l'industrie du tabac pertinentes au regard de l'objectif de la Convention;

d) des programmes de formation ou de sensibilisation et prise de conscience efficaces et appropriés en matière de lutte antitabac à l'intention des personnes telles que les agents de santé, les agents communautaires, les travailleurs sociaux, les professionnels des médias, les éducateurs, les décideurs, les administrateurs et autres personnes concernées;

e) la sensibilisation et la participation des organismes publics et privés et d'organisations non gouvernementales qui ne soient pas liés à l'industrie du tabac, lors de l'élaboration et de la mise en oeuvre de programmes et de stratégies intersectoriels de lutte antitabac; et

f) la sensibilisation du public aux informations concernant les conséquences sanitaires, économiques et environnementales préjudiciables de la production et de la consommation de tabac, et l'accès du public à ces informations.

Article 13
Publicité en faveur du tabac, promotion et parrainage

1. Les Parties reconnaissent que l'interdiction globale de la publicité, de la promotion et du parrainage réduira la consommation des produits du tabac.

2. Chaque Partie, dans le respect de sa constitution ou de ses principes constitutionnels, instaure une interdiction globale de toute publicité en

faveur du tabac et de toute promotion et de tout parrainage du tabac. Cette interdiction, sous réserve du cadre juridique et des moyens techniques dont dispose cette Partie, inclut l'interdiction globale de la publicité, de la promotion et du parrainage transfrontières à partir de son territoire. A cet égard, dans les cinq années suivant l'entrée en vigueur de la Convention pour cette Partie, celle-ci adopte des mesures législatives, exécutives, administratives et/ou d'autres mesures appropriées et fait rapport conformément à l'article 21.

3. Une Partie qui est dans l'incapacité d'instaurer une interdiction globale du fait de sa constitution ou de ses principes constitutionnels impose des restrictions à toute publicité en faveur du tabac et à toute promotion et tout parrainage du tabac. Ces restrictions, sous réserve du cadre juridique et des moyens techniques dont dispose cette Partie, incluent des restrictions ou l'interdiction globale de la publicité, de la promotion et du parrainage à partir de son territoire ayant des effets transfrontières. A cet égard, chaque Partie adopte des mesures législatives, exécutives, administratives et/ou d'autres mesures appropriées et fait rapport conformément à l'article 21.

4. Comme mesure minimum, et dans le respect de sa constitution ou de ses principes constitutionnels, chaque Partie :

a) interdit toutes les formes de publicité en faveur du tabac, de promotion et de parrainage qui contribuent à promouvoir un produit du tabac par des moyens fallacieux, tendancieux ou trompeurs, ou susceptibles de donner une impression erronée quant aux caractéristiques, aux effets sur la santé, aux risques ou émissions du produit;

b) exige qu'une mise en garde sanitaire ou d'autres mises en garde ou messages appropriés accompagnent toute publicité en faveur du tabac et, le cas échéant, toute promotion et tout parrainage du tabac;

c) limite le recours à des mesures d'incitation directes ou indirectes qui encouragent l'achat de produits du tabac par le public;

d) si elle n'a pas imposé d'interdiction globale, exige de l'industrie du tabac qu'elle fasse connaître aux autorités gouvernementales compétentes les dépenses qu'elle consacre à la publicité, à la promotion et au parrainage encore non interdits. Ces autorités, dans les conditions fixées par la législation nationale, peuvent décider de rendre ces chiffres accessibles au public ainsi qu'à la Conférence des Parties, conformément à l'article 21;

e) impose une interdiction globale ou, si elle est dans l'incapacité d'imposer une interdiction globale du fait de sa constitution ou de ses principes constitutionnels, limite la publicité en faveur du tabac, ainsi que la promotion et le parrainage à la radio, à la télévision, dans la

presse écrite et, le cas échéant, dans d'autres médias tels que l'Internet, dans les cinq ans; et

f) interdit ou, si elle est dans l'incapacité d'interdire du fait de sa constitution ou de ses principes constitutionnels, limite le parrainage des manifestations ou des activités internationales et/ou des participants à ces manifestations ou activités.

5. Les Parties sont encouragées à appliquer des mesures allant au-delà des obligations énoncées au paragraphe 4.

6. Les Parties coopèrent à la mise au point de technologies et d'autres moyens nécessaires pour faciliter l'élimination de la publicité transfrontières.

7. Les Parties qui ont interdit certaines formes de publicité en faveur du tabac, de promotion et de parrainage ont le droit souverain d'interdire ces formes de publicité, de promotion et de parrainage transfrontières entrant dans leur territoire et d'imposer les mêmes sanctions que celles qui s'appliquent à la publicité, à la promotion et au parrainage, tant sur le plan intérieur qu'à partir de leur territoire, conformément à leur législation nationale. Le présent paragraphe n'entérine ni n'approuve aucune sanction spécifique.

8. Les Parties étudient l'élaboration d'un protocole définissant des mesures appropriées qui nécessitent une collaboration internationale en vue d'une interdiction globale de la publicité, de la promotion et du parrainage transfrontières.

Article 14

Mesures visant à réduire la demande en rapport avec la dépendance à l'égard du tabac et le sevrage tabagique

1. Chaque Partie élabore et diffuse des directives appropriées, globales et intégrées fondées sur des données scientifiques et sur les meilleures pratiques, en tenant compte du contexte et des priorités nationaux et prend des mesures efficaces pour promouvoir le sevrage tabagique et le traitement adéquat de la dépendance à l'égard du tabac.

2. A cette fin, chaque Partie s'efforce :

a) de concevoir et mettre en oeuvre des programmes efficaces visant à promouvoir le sevrage tabagique, dans des lieux comme les établissements d'enseignement, les établissements de santé, les lieux de travail et de pratique des sports;

b) d'inclure le diagnostic et le traitement de la dépendance à l'égard du tabac et les services de conseil sur le sevrage tabagique dans les programmes, plans et stratégies nationaux de santé et d'éducation, avec la participation des agents de santé, des agents communautaires et des travailleurs sociaux, selon qu'il conviendra;

c) de mettre sur pied, dans les établissements de santé et les centres de réadaptation, des programmes de diagnostic, de conseil, de prévention et de traitement de la dépendance à l'égard du tabac; et

d) de collaborer avec les autres Parties afin de faciliter l'accès à un traitement de la dépendance à l'égard du tabac à un coût abordable, y compris aux produits pharmaceutiques, conformément à l'article 22. Ces produits et leurs composants peuvent comprendre des médicaments ou des produits utilisés pour administrer des médicaments et des diagnostics, le cas échéant.

PARTIE IV : MESURES RELATIVES A LA REDUCTION DE L'OFFRE DE TABAC

Article 15
Commerce illicite des produits du tabac

1. Les Parties reconnaissent que l'élimination de toutes les formes de commerce illicite de produits du tabac, y compris la contrebande, la fabrication illicite et la contrefaçon, et l'élaboration et la mise en oeuvre d'une législation nationale dans ce domaine, en sus des accords sous-régionaux, régionaux et mondiaux, constituent des aspects essentiels de la lutte antitabac.

2. Chaque Partie adopte et applique des mesures législatives, exécutives, administratives ou autres mesures efficaces pour faire en sorte que tous les paquets et cartouches de produits du tabac et toutes les formes de conditionnement extérieur de ces produits comportent une marque pour aider les Parties à déterminer l'origine des produits du tabac et, conformément à la législation nationale et aux accords bilatéraux ou multilatéraux pertinents, pour aider les Parties à déterminer le point où intervient le détournement et à surveiller, suivre et contrôler le mouvement des produits du tabac et leur statut en droit. En outre, chaque Partie :

a) exige que les paquets et cartouches de produits du tabac destinés à la vente au détail ou en gros sur son marché intérieur comportent l'indication « Vente autorisée uniquement en (inscrire le nom du pays, de la subdivision nationale, régionale ou fédérale) » ou toute autre marque appropriée indiquant la destination finale ou susceptible d'aider les autorités à déterminer si le produit est légalement en vente sur le marché intérieur; et

b) envisage, selon qu'il conviendra, la mise en place d'un régime pratique permettant de suivre et de retrouver la trace des produits de manière à rendre le système de distribution plus sûr et de contribuer aux enquêtes sur le commerce illicite.

3. Chaque Partie exige que l'information sur le conditionnement ou les marques visées au paragraphe 2 du présent article soit présentée lisiblement et/ou rédigée dans sa ou ses langues principales.

4. En vue d'éliminer le commerce illicite des produits du tabac, chaque Partie :

a) surveille le commerce transfrontières des produits du tabac, y compris le commerce illicite, recueille des données à ce sujet et assure l'échange d'informations entre les administrations douanières et fiscales et les autres administrations, selon qu'il conviendra et conformément à la législation nationale et aux accords bilatéraux ou multilatéraux applicables;

b) adopte ou renforce des mesures législatives, assorties des sanctions et des recours appropriés, contre le commerce illicite des produits du tabac, y compris des cigarettes de contrefaçon et de contrebande;

c) prend des mesures appropriées pour assurer la destruction de tout le matériel de fabrication et des cigarettes et autres produits du tabac de contrefaçon et de contrebande confisqués, au moyen si possible de méthodes respectueuses de l'environnement, ou leur élimination conformément à la législation nationale;

d) adopte et applique des mesures pour surveiller, vérifier et contrôler l'entreposage et la distribution des produits du tabac gardés ou circulant en franchise de droits ou de taxes dans le cadre de sa juridiction; et

e) adopte les mesures voulues pour permettre la confiscation des profits dérivés du commerce illicite des produits du tabac.

5. Les informations recueillies en application des paragraphes 4.a) et 4.d) du présent article doivent être fournies selon les besoins, par les Parties, sous forme agrégée, dans leurs rapports périodiques à la Conférence des Parties, conformément à l'article 21.

6. Les Parties encouragent, selon les besoins et conformément à leur législation nationale, la coopération entre les organismes nationaux, ainsi qu'entre les organisations intergouvernementales internationales et régionales compétentes, en ce qui concerne les enquêtes, les poursuites et les procédures, pour éliminer le commerce illicite des produits du tabac. Une attention spéciale est accordée à la coopération aux niveaux régional et sous-régional pour lutter contre le commerce illicite des produits du tabac.

7. Chaque Partie s'efforce d'adopter et d'appliquer d'autres mesures, y compris l'octroi de licences, le cas échéant, pour contrôler ou réglementer la production et la distribution des produits du tabac afin de prévenir le commerce illicite.

Article 16

Vente aux mineurs et par les mineurs

1. Chaque Partie adopte et applique des mesures législatives, exécutives, administratives ou autres mesures efficaces au niveau gouvernemental approprié pour interdire la vente de produits du tabac aux personnes qui n'ont pas atteint l'âge prévu en droit interne ou fixé par la législation nationale, ou l'âge de dix-huit ans. Ces mesures peuvent comprendre :

a) l'exigence pour tous les vendeurs de produits du tabac d'afficher visiblement et en évidence dans leur point de vente un avis d'interdiction de la vente de tabac aux mineurs et, en cas de doute, de demander à chaque acheteur de prouver par des moyens appropriés qu'il a atteint l'âge légal;

b) l'interdiction de vendre des produits du tabac en les rendant directement accessibles, par exemple sur les étagères des magasins;

c) l'interdiction de la fabrication et de la vente de confiseries, en-cas, jouets ou autres objets ayant la forme de produits du tabac attrayants pour les mineurs; et

d) des mesures prises pour s'assurer que les distributeurs automatiques de produits du tabac placés sous sa juridiction ne soient pas accessibles aux mineurs et ne fassent pas de promotion pour la vente de ces produits aux mineurs.

2. Chaque Partie interdit la distribution gratuite de produits du tabac au public et surtout aux mineurs ou encourage cette interdiction.

3. Chaque Partie s'efforce d'interdire la vente de cigarettes à la pièce ou par petits paquets, ce qui facilite l'accès de ces produits aux mineurs.

4. Les Parties reconnaissent que, pour en accroître l'efficacité, les mesures visant à interdire la vente de produits du tabac aux mineurs devraient, selon qu'il convient, être appliquées conjointement avec les autres dispositions de la Convention.

5. Lorsqu'elle signe, ratifie, accepte ou approuve la Convention ou y adhère, ou à tout moment par la suite, une Partie peut, par une déclaration écrite ayant force obligatoire, indiquer qu'elle s'engage à interdire l'introduction de distributeurs automatiques de produits du tabac dans sa juridiction ou, le cas échéant, à proscrire totalement ces machines. La déclaration faite en vertu du présent article sera communiquée par le Dépositaire à toutes les Parties à la Convention.

6. Chaque Partie adopte et applique des mesures législatives, exécutives, administratives ou autres mesures efficaces, y compris des sanctions à l'encontre des vendeurs et des distributeurs, afin d'assurer le respect des obligations énoncées aux paragraphes 1-5 du présent article.

7. Chaque Partie devrait adopter et appliquer, selon qu'il convient, des mesures législatives, exécutives, administratives ou autres mesures efficaces pour interdire les ventes de produits du tabac par les personnes qui n'ont pas atteint l'âge prévu en droit interne ou fixé par la législation nationale, ou l'âge de dix-huit ans.

Article 17
Fourniture d'un appui à des activités de remplacement économiquement viables

Les Parties s'efforcent, en coopérant entre elles et avec les organisations intergouvernementales internationales et régionales compétentes, de promouvoir, le cas échéant, des solutions de remplacement économiquement viables pour les cultivateurs, les travailleurs et, selon qu'il conviendra, les vendeurs.

PARTIE V : PROTECTION DE L'ENVIRONNEMENT

Article 18
Protection de l'environnement et de la santé des personnes

En s'acquittant de leurs obligations en vertu de la Convention, les Parties conviennent de tenir dûment compte, pour ce qui est de la culture du tabac et de la fabrication de produits du tabac sur leur territoire respectif, de la protection de l'environnement et de la santé des personnes eu égard à l'environnement.

PARTIE VI : QUESTIONS SE RAPPORTANT A LA RESPONSABILITE

Article 19
Responsabilité

1. Aux fins de la lutte antitabac, les Parties envisagent de prendre des mesures législatives ou de promouvoir les lois existantes, si nécessaire, en matière de responsabilité pénale et civile, y compris l'indemnisation le cas échéant.

2. Les Parties coopèrent pour échanger des informations par l'intermédiaire de la Conférence des Parties conformément à l'article 21, y compris :

a) des informations sur les effets sanitaires de la consommation de produits du tabac et de l'exposition à la fumée de tabac, conformément à l'article 20.3 a); et

b) des informations sur la législation et la réglementation en vigueur, ainsi que sur la jurisprudence pertinente.

3. Les Parties, selon qu'il conviendra et d'un commun accord, dans les limites fixées par la législation nationale, les politiques, les pratiques juridiques et les dispositions conventionnelles applicables, s'accordent une assistance juridique mutuelle pour toute procédure judiciaire relative à la responsabilité civile et pénale, dans le respect de la Convention.

4. La Convention n'affecte ou ne limite en rien les droits d'accès des Parties aux tribunaux d'autres Parties lorsque de tels droits existent.

5. La Conférence des Parties peut envisager, si possible, dans une phase initiale, compte tenu des travaux en cours dans les instances internationales compétentes, des questions liées à la responsabilité, y compris des approches internationales appropriées de ces questions et des moyens appropriés pour aider les Parties, à leur demande, dans leurs activités législatives et autres, conformément au présent article.

PARTIE VII : COOPERATION SCIENTIFIQUE ET TECHNIQUE ET COMMUNICATION D'INFORMATIONS

Article 20
Recherche, surveillance et échange d'informations

1. Les Parties s'engagent à développer et à promouvoir la recherche nationale et à coordonner des programmes de recherche aux niveaux régional et international dans le domaine de la lutte antitabac. A cette fin, chaque Partie s'efforce :

a) d'entreprendre, directement ou par l'intermédiaire des organisations intergouvernementales internationales et régionales et autres organismes compétents, des activités de recherche et d'évaluation scientifique, et d'y coopérer, en encourageant la recherche sur les déterminants et les conséquences de la consommation de tabac et de l'exposition à la fumée du tabac, ainsi que la recherche de cultures de substitution; et

b) de promouvoir et de renforcer, avec l'appui des organisations intergouvernementales internationales et régionales et autres organismes compétents, la formation et le soutien de tous ceux qui participent à des activités de lutte antitabac, y compris la recherche, la mise en oeuvre et l'évaluation.

2. Les Parties mettent en place, selon le cas, des programmes de surveillance nationale, régionale et mondiale de l'ampleur, des tendances, des déterminants et des conséquences de la consommation de tabac et de l'exposition à la fumée du tabac. A cette fin, les Parties intègrent les programmes de surveillance du tabagisme aux programmes de surveillance de la santé aux niveaux national, régional et mondial afin

que les données soient comparables et puissent être analysées aux niveaux régional et international, le cas échéant.

3. Les Parties reconnaissent l'importance de l'aide financière et technique des organisations intergouvernementales internationales et régionales et autres organismes. Chaque Partie s'efforce :

a) de mettre en place progressivement un système national de surveillance épidémiologique de la consommation de tabac et des indicateurs sociaux, économiques et sanitaires y relatifs;

b) de coopérer avec les organisations intergouvernementales internationales et régionales et autres organismes compétents, y compris les organismes gouvernementaux et non gouvernementaux, à la surveillance régionale et mondiale du tabac et à l'échange d'informations sur les indicateurs visés au paragraphe 3.a) du présent article; et

c) de coopérer avec l'Organisation mondiale de la Santé à l'élaboration de lignes directrices ou de procédures générales pour recueillir, analyser et diffuser les données de surveillance en rapport avec le tabac.

4. Les Parties, sous réserve de leur législation nationale, encouragent et facilitent l'échange d'informations scientifiques, techniques, socio-économiques, commerciales et juridiques du domaine public, ainsi que d'informations concernant les pratiques de l'industrie du tabac et la culture du tabac en rapport avec la Convention, en tenant compte des besoins spéciaux des pays en développement Parties et des Parties à économie en transition et en prenant des mesures à cet égard. Chaque Partie s'efforce :

a) d'établir progressivement et de maintenir une base de données actualisée concernant les lois et règlements sur la lutte antitabac et, le cas échéant, un ensemble d'informations sur leur application, ainsi que sur la jurisprudence pertinente, et de coopérer à la mise sur pied de programmes de lutte antitabac aux niveaux régional et mondial;

b) d'établir progressivement et de maintenir une base de données actualisée concernant les programmes de surveillance nationaux, conformément au paragraphe 3 a) du présent article; et

c) de coopérer avec les organisations internationales compétentes pour mettre en place progressivement et maintenir un système mondial chargé de recueillir et de diffuser régulièrement des informations sur la production de tabac, la fabrication de produits du tabac et les activités de l'industrie du tabac qui ont un impact sur la Convention ou sur les activités nationales de lutte antitabac.

5. Les Parties devront coopérer, au sein des organisations intergouvernementales internationales et régionales et des institutions

financières et de développement dont ils sont membres, pour promouvoir et encourager la fourniture de ressources techniques et financières au Secrétariat afin d'aider les pays en développement Parties et les Parties à économie en transition à s'acquitter de leurs obligations en matière de recherche, de surveillance et d'échange d'informations.

Article 21
Notification et échange d'informations

1. Chaque Partie soumet à la Conférence des Parties, par l'intermédiaire du Secrétariat, des rapports périodiques sur la mise en oeuvre de la Convention, qui devront inclure :

a) des informations sur les mesures législatives, exécutives, administratives ou toutes autres mesures prises pour la mise en oeuvre de la Convention;

b) des informations, le cas échéant, sur les difficultés ou obstacles qu'elle a rencontrés dans la mise en oeuvre de la Convention, et sur les mesures prises pour surmonter ces derniers;

c) des informations, le cas échéant, sur l'aide financière et technique fournie ou reçue pour des activités de lutte antitabac;

d) des informations sur la surveillance et la recherche ainsi qu'il est spécifié à l'article 20; et

e) les informations précisées aux articles 6.3, 13.2, 13.3 13.4 d), 15.5 et 19.2.

2. La fréquence et la forme des rapports présentés par l'ensemble des Parties sont déterminées par la Conférence des Parties. Chaque Partie établit son rapport initial dans les deux années suivant l'entrée en vigueur de la Convention pour cette Partie.

3. La Conférence des Parties, conformément aux articles 22 et 26, examine les dispositions pour aider les pays en développement Parties et les Parties à économie en transition, qui en font la demande, à s'acquitter de leurs obligations aux termes du présent article.

4. La notification et l'échange d'informations au titre de la Convention sont régis par le droit national relatif à la confidentialité et à la vie privée. Les Parties protègent, comme convenu entre elles, toute information confidentielle qui est échangée.

Article 22
Coopération dans les domaines scientifique, technique et juridique et fourniture de compétences connexes

1. Les Parties coopèrent directement ou par l'intermédiaire des organismes internationaux compétents pour renforcer leur capacité de

s'acquitter des obligations découlant de la Convention, en tenant compte des besoins des pays en développement Parties et des Parties à économie en transition. Cette coopération facilite, dans les conditions convenues d'un commun accord, le transfert de compétences techniques, scientifiques et juridiques et de technologie pour établir et renforcer les stratégies, les plans et les programmes nationaux de lutte antitabac visant notamment :

a) à favoriser la mise au point, le transfert et l'acquisition de technologies, de connaissances, de compétences et de capacités liées à la lutte antitabac;

b) à fournir des compétences techniques, scientifiques et juridiques ou autres pour établir et renforcer les stratégies, les plans et les programmes nationaux de lutte antitabac destinés à mettre en oeuvre la Convention, notamment :

i) en aidant, sur demande, à l'élaboration d'une base législative solide ainsi que de programmes techniques visant notamment à dissuader les personnes de commencer à fumer, à les encourager à cesser de fumer et à les protéger contre l'exposition à la fumée du tabac;

ii) en aidant, le cas échéant, les travailleurs du tabac à trouver d'autres moyens de subsistance appropriés économiquement et juridiquement viables d'une manière économiquement et juridiquement viable; et

iii) en aidant, le cas échéant, les cultivateurs de tabac à passer à d'autres cultures d'une manière économiquement viable;

c) à appuyer des programmes de formation ou de sensibilisation bien conçus adaptés au personnel concerné, conformément à l'article 12;

d) à mettre à disposition, le cas échéant, le matériel, les équipements et les fournitures, ainsi que le soutien logistique nécessaires aux stratégies, plans et programmes de lutte antitabac;

e) à définir des méthodes de lutte antitabac, y compris pour le traitement complet de l'addiction nicotinique; et

f) à promouvoir, le cas échéant, la recherche visant à rendre le coût du traitement complet de l'addiction nicotinique plus abordable.

2. La Conférence des Parties encourage et facilite le transfert de compétences techniques, scientifiques et juridiques et de technologie avec le soutien financier obtenu selon les modalités prévues à l'article 26.

PARTIE VIII : DISPOSITIONS INSTITUTIONNELLES ET RESSOURCES FINANCIERES

Article 23
Conférence des Parties

1. Il est institué une Conférence des Parties. La première session de la Conférence sera convoquée par l'Organisation mondiale de la Santé un an au plus tard après l'entrée en vigueur de la présente Convention. La Conférence déterminera le lieu et la date des sessions ordinaires ultérieures à sa première session.

2. Des sessions extraordinaires de la Conférence des Parties peuvent avoir lieu à tout autre moment si la Conférence le juge nécessaire, ou à la demande écrite d'une Partie, sous réserve que, dans les six mois suivant sa communication auxdites Parties par le Secrétariat de la Convention, cette demande soit appuyée par un tiers au moins des Parties.

3. La Conférence des Parties adoptera son règlement intérieur par consensus à sa première session.

4. La Conférence des Parties adoptera par consensus son propre règlement financier qui sera également applicable au financement des organes subsidiaires qu'elle pourrait établir ainsi que des dispositions financières qui régiront le fonctionnement du Secrétariat. A chacune de ses sessions ordinaires, elle adopte un budget pour l'exercice financier prenant fin à sa session ordinaire suivante.

5. La Conférence des Parties examine régulièrement l'application de la Convention et prend les décisions nécessaires pour en promouvoir la mise en oeuvre efficace; elle peut adopter des protocoles, des annexes et des amendements à la Convention, conformément aux articles 28, 29 et 33. A cette fin, la Conférence :

a) encourage et facilite l'échange d'informations, conformément aux articles 20 et 21;

b) encourage et oriente l'élaboration et l'amélioration périodique de méthodologies comparables pour la recherche et la collecte de données, en plus de celles qui sont prévues à l'article 20, concernant la mise en oeuvre de la Convention;

c) encourage, selon qu'il convient, l'élaboration, l'application et l'évaluation de stratégies, de plans et de programmes, ainsi que de politiques, de lois et autres mesures;

d) examine les rapports soumis par les Parties conformément à l'article 21 et adopte des rapports périodiques sur la mise en oeuvre de la Convention;

e) encourage et facilite la mobilisation de ressources financières pour la mise en oeuvre de la Convention, conformément à l'article 26;

f) crée les organes subsidiaires nécessaires pour atteindre l'objectif de la Convention;

g) requiert, selon les besoins, les services, la coopération et les informations fournis par les organisations et organes compétents et pertinents du système des Nations Unies et d'autres organisations intergouvernementales internationales et régionales, et organisations et organes non gouvernementaux afin de renforcer la mise en oeuvre de la Convention; et

h) étudie d'autres actions, le cas échéant, pour atteindre l'objectif de la Convention, à la lumière de l'expérience acquise dans la mise en oeuvre de celle-ci.

6. La Conférence des Parties fixe les critères de participation des observateurs à ses débats.

Article 24
Secrétariat

1. La Conférence des Parties désignera un secrétariat permanent et organisera son fonctionnement. La Conférence des Parties s'efforcera de s'acquitter de cette tâche à sa première session.

2. Jusqu'à ce qu'un secrétariat permanent soit désigné et établi, les fonctions de secrétariat de la présente Convention seront assurées par l'Organisation mondiale de la Santé.

3. Les fonctions du Secrétariat sont les suivantes :

a) organiser les sessions de la Conférence des Parties et de tout organe subsidiaire, et leur fournir les services nécessaires;

b) transmettre les rapports qu'il reçoit conformément à la Convention;

c) aider les Parties qui en font la demande, et en particulier les pays en développement Parties et les Parties à économie en transition, à compiler et à communiquer les informations requises conformément aux dispositions de la Convention;

d) établir des rapports sur ses activités en vertu de la Convention sous l'autorité de la Conférence des Parties et les soumettre à la Conférence des Parties;

e) assurer, sous l'autorité de la Conférence des Parties, la coordination nécessaire avec les organisations intergouvernementales internationales et régionales et autres organismes compétents;

f) prendre, sous l'autorité de la Conférence des Parties, les dispositions administratives ou contractuelles nécessaires à l'accomplissement efficace de ses fonctions; et

g) s'acquitter des autres fonctions de secrétariat précisées par la Convention et par l'un quelconque de ses protocoles, ainsi que des autres fonctions qui pourront lui être assignées par la Conférence des Parties.

Article 25
Relations entre la Conférence des Parties et les organisations intergouvernementales

Afin d'assurer la coopération technique et financière requise pour atteindre l'objectif de la présente Convention, la Conférence des Parties peut solliciter la coopération des organisations intergouvernementales internationales et régionales compétentes, y compris des institutions financières et de développement.

Article 26
Ressources financières

1. Les Parties reconnaissent le rôle important que jouent les ressources financières pour atteindre l'objectif de la présente Convention.

2. Chaque Partie fournit un appui financier en faveur des activités nationales visant à atteindre l'objectif de la Convention, conformément aux plans, priorités et programmes nationaux.

3. Les Parties encouragent, le cas échéant, l'utilisation des voies bilatérales, régionales, sous-régionales et autres voies multilatérales pour fournir des fonds destinés à l'élaboration et au renforcement des programmes complets et multisectoriels de lutte antitabac des pays en développement Parties et des Parties à économie en transition. Des solutions de rechange économiquement viables à la production de tabac, et notamment la diversification des cultures, doivent donc être envisagées et soutenues dans le cadre de stratégies de développement durable élaborées au niveau national.

4. Les Parties représentées dans les organisations intergouvernementales internationales et régionales compétentes et les institutions financières et de développement encouragent ces entités à fournir une assistance financière aux pays en développement Parties et aux Parties à économie en transition afin de les aider à s'acquitter de leurs obligations en vertu de la Convention, sans limitation du droit à la participation au sein de ces organisations.

5. Les Parties sont convenues que :

a) pour permettre aux Parties de s'acquitter de leurs obligations en vertu de la Convention, toutes les ressources potentielles et existantes pertinentes, qu'elles soient financières, techniques ou autres, tant publiques que privées, qui sont disponibles pour les activités de lutte antitabac doivent être mobilisées et utilisées en faveur de toutes les Parties, surtout des pays en développement et des pays à économie en transition;

b) le Secrétariat conseille les pays en développement Parties et les Parties à économie en transition, sur leur demande, au sujet des sources de financement existantes afin de les aider à exécuter leurs obligations en vertu de la Convention;

c) sur la base d'une étude entreprise par le Secrétariat et d'autres informations pertinentes, la Conférence des Parties examine à sa première session les sources et les mécanismes d'assistance existants et potentiels, et détermine dans quelle mesure elles sont adéquates;

d) la Conférence des Parties tient compte des résultats de cet examen pour déterminer s'il y a lieu de renforcer les mécanismes existants ou de créer un fonds mondial de contributions volontaires ou tout autre mécanisme de financement approprié en vue de canaliser des ressources supplémentaires, si nécessaire, vers les pays en développement Parties et les Parties à économie en transition, et les aider ainsi à atteindre les objectifs de la Convention.

PARTIE IX : REGLEMENT DES DIFFERENDS

Article 27
Règlement des différends

1. Si un différend surgit entre deux ou plusieurs Parties à propos de l'interprétation ou de l'application de la présente Convention, les Parties concernées s'efforcent de le régler par les voies diplomatiques, par la négociation ou par tout autre moyen pacifique de leur choix, y compris en recourant aux bons offices ou à la médiation d'un tiers ou à la conciliation. En cas d'échec, les Parties en cause restent tenues de poursuivre leurs efforts en vue de parvenir à un règlement.

2. Lorsqu'il ratifie, accepte, approuve ou confirme formellement la Convention ou y adhère, ou à tout moment par la suite, tout Etat ou toute organisation d'intégration économique régionale peut déclarer par écrit au Dépositaire qu'il accepte comme étant obligatoire de soumettre un différend qui n'est pas réglé conformément au paragraphe 1 du présent article à un arbitrage ad hoc, conformément aux procédures adoptées par consensus par la Conférence des Parties.

3. Les dispositions du présent article s'appliquent à l'égard de tout protocole entre les Parties audit protocole, sauf s'il en est disposé autrement dans ledit protocole.

PARTIE X : ELABORATION ULTERIEURE DE LA CONVENTION

Article 28
Amendements à la présente Convention

1. Toute Partie peut proposer des amendements à la présente Convention. Ces amendements sont examinés par la Conférence des Parties.

2. Les amendements à la Convention sont adoptés par la Conférence des Parties. Le texte de tout amendement proposé à la Convention est communiqué par le Secrétariat aux Parties six mois au moins avant la session à laquelle il est proposé pour adoption. Le Secrétariat communique aussi les amendements proposés aux signataires de la Convention et, pour information, au Dépositaire.

3. Les Parties n'épargnent aucun effort pour parvenir à un accord par consensus au sujet de tout amendement proposé à la Convention. Si tous les efforts en ce sens ont été épuisés et si un accord ne s'est pas dégagé, l'amendement est adopté en dernier recours par un vote à la majorité des trois quarts des Parties présentes et votantes à la session. Aux fins du présent article, on entend par Parties présentes et votantes les Parties présentes et votant pour ou contre. Tout amendement adopté est communiqué par le Secrétariat au Dépositaire qui le transmet à toutes les Parties pour acceptation.

4. Les instruments d'acceptation des amendements sont déposés auprès du Dépositaire. Tout amendement adopté conformément au paragraphe 3 du présent article entre en vigueur entre les Parties l'ayant accepté le quatre-vingt-dixième jour qui suit la date de réception, par le Dépositaire, des instruments d'acceptation déposés par les deux tiers au moins des Parties à la Convention.

5. L'amendement entre en vigueur à l'égard de toute autre Partie le quatre-vingt-dixième jour qui suit la date du dépôt par ladite Partie, auprès du Dépositaire, de son instrument d'acceptation de l'amendement.

Article 29
Adoption et amendement des annexes à la présente Convention

1. Les annexes à la présente Convention et les amendements y relatifs sont proposés, adoptés et entrent en vigueur selon la procédure décrite à l'article 28.

2. Les annexes à la Convention font partie intégrante de celle-ci et, sauf disposition contraire expresse, toute référence à la présente Convention est aussi une référence auxdites annexes.

3. Les annexes ne contiendront que des listes, des formulaires et divers autres éléments de description relatifs aux questions procédurales, scientifiques, techniques ou administratives.

PARTIE XI : DISPOSITIONS FINALES

Article 30
Réserves

Aucune réserve ne pourra être faite à la présente Convention.

Article 31
Dénonciation

1. A tout moment après l'expiration d'un délai de deux ans à compter de la date d'entrée en vigueur de la présente Convention à l'égard d'une Partie, ladite Partie peut dénoncer la Convention par notification écrite donnée au Dépositaire.

2. La dénonciation prendra effet à l'expiration d'un délai d'un an à compter de la date à laquelle le Dépositaire en aura reçu notification, ou à toute autre date ultérieure qui serait spécifiée dans la notification.

3. Toute Partie qui aura dénoncé la Convention est réputée avoir dénoncé également tout protocole auquel elle est Partie.

Article 32
Droit de vote

1. Chaque Partie à la présente Convention dispose d'une voix, sous réserve des dispositions du paragraphe 2 du présent article.

2. Les organisations d'intégration économique régionale disposent, pour exercer leur droit de vote dans les domaines relevant de leur compétence, d'un nombre de voix égal au nombre de leurs Etats Membres qui sont Parties à la Convention. Ces organisations n'exercent pas leur droit de vote si l'un quelconque de leurs Etats Membres exerce le sien, et inversement.

Article 33
Protocoles

1. Toute Partie peut proposer des protocoles. Ces propositions sont examinées par la Conférence des Parties.

2. La Conférence des Parties peut adopter des protocoles à la présente Convention. Tout est mis en oeuvre pour adopter ces protocoles par

consensus. Si tous les efforts en vue de parvenir à un consensus ont été épuisés et qu'aucun accord n'est intervenu, le protocole est en dernier recours adopté à la majorité des trois quarts des Parties présentes et votantes à la session. Aux fins du présent article, on entend par Parties présentes et votantes les Parties présentes votant pour ou contre le protocole.

3. Le texte de tout protocole proposé est communiqué par le Secrétariat aux Parties six mois au moins avant la session à laquelle il est proposé pour adoption.

4. Seules les Parties à la Convention peuvent être Parties à un protocole.

5. Les protocoles à la Convention n'ont force obligatoire que pour les Parties aux protocoles en question. Seules les Parties à un protocole peuvent prendre des décisions sur des questions intéressant exclusivement ledit protocole.

6. Les conditions d'entrée en vigueur de tout protocole sont régies par ledit instrument.

Article 34
Signature

La présente Convention sera ouverte à la signature de tous les Membres de l'Organisation mondiale de la Santé et des Etats qui ne sont pas Membres de l'Organisation mondiale de la Santé mais sont Membres de l'Organisation des Nations Unies ainsi que des organisations d'intégration économique régionale, au Siège de l'Organisation mondiale de la Santé à Genève du 16 juin 2003 au 22 juin 2003, puis au Siège de l'Organisation des Nations Unies à New York du 30 juin 2003 au 29 juin 2004.

Article 35
Ratification, acceptation, approbation, confirmation formelle ou adhésion

1. La présente Convention est soumise à la ratification, à l'acceptation, à l'approbation ou à l'adhésion des Etats et à la confirmation formelle ou à l'adhésion des organisations d'intégration économique régionale. Elle sera ouverte à l'adhésion dès le lendemain du jour où elle cessera d'être ouverte à la signature. Les instruments de ratification, d'acceptation, d'approbation, de confirmation formelle ou d'adhésion seront déposés auprès du Dépositaire.

2. Toute organisation d'intégration économique régionale qui devient Partie à la Convention, sans qu'aucun de ses Etats Membres n'y soit Partie, est liée par toutes les obligations énoncées dans la Convention. Lorsqu'un ou plusieurs Etats Membres d'une de ces organisations sont Parties à la Convention, l'organisation et ses Etats Membres conviennent

de leurs responsabilités respectives en ce qui concerne l'exécution de leurs obligations en vertu de la Convention. En pareil cas, l'organisation et les Etats Membres ne sont pas habilités à exercer simultanément leurs droits au titre de la Convention.

3. Les organisations d'intégration économique régionale dans leurs instruments de confirmation formelle, ou dans leurs instruments d'adhésion, indiquent l'étendue de leurs compétences dans les domaines régis par la Convention. Ces organisations notifient également toute modification importante de l'étendue de leurs compétences au Dépositaire qui en informe à son tour les Parties.

Article 36
Entrée en vigueur

1. La présente Convention entrera en vigueur le quatre-vingt-dixième jour suivant la date du dépôt du quarantième instrument de ratification, d'acceptation, d'approbation, de confirmation formelle ou d'adhésion auprès du Dépositaire.

2. A l'égard de chacun des Etats qui ratifie, accepte ou approuve la Convention, ou y adhère, après que les conditions énoncées au paragraphe 1 du présent article en ce qui concerne l'entrée en vigueur ont été remplies, la Convention entrera en vigueur le quatre-vingt-dixième jour suivant la date du dépôt, par ledit Etat, de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion.

3. A l'égard de chacune des organisations d'intégration économique régionale déposant un instrument de confirmation formelle ou un instrument d'adhésion après que les conditions énoncées au paragraphe 1 du présent article en ce qui concerne l'entrée en vigueur ont été remplies, la Convention entrera en vigueur le quatre-vingt-dixième jour suivant la date du dépôt, par ladite organisation, de son instrument de confirmation formelle ou d'adhésion.

4. Aux fins du présent article, aucun des instruments déposés par une organisation d'intégration économique régionale ne doit être considéré comme venant s'ajouter aux instruments déjà déposés par les Etats Membres de ladite organisation.

Article 37
Dépositaire

Le Secrétaire général de l'Organisation des Nations Unies sera le Dépositaire de la présente Convention et des amendements y relatifs et des protocoles et annexes adoptés conformément aux articles 28, 29 et 33.

Article 38
Textes faisant foi

L'original de la présente Convention, dont les textes anglais, arabe, chinois, espagnol, français et russe font également foi, sera déposé auprès du Secrétaire général de l'Organisation des Nations Unies.

EN FOI DE QUOI, les soussignés, à ce dûment autorisés, ont signé la présente Convention.

FAIT à GENEVE le vingt et un mai deux mille trois.

Convention-cadre pour la lutte antitabac de l'OMS (CCLAT), 16 mai 2005

Ratifications

1. Afrique du Sud
2. Allemagne
3. Arabie saoudite
4. Arménie*
5. Australie
6. Bangladesh
7. Bhoutan
8. Botswana
9. Brunéi Darussalam
10. Canada
11. Danemark
12. Egypte
13. Espagne
14. Fidji
15. Finlande
16. France
17. Ghana
18. Honduras
19. Hongrie
20. Iles Cook
21. Iles Marshall
22. Iles Salomon
23. Inde
24. Islande
25. Japon
26. Jordanie
27. Kenya
28. Lesotho
29. Lettonie
30. Lituanie
31. Madagascar
32. Maldives
33. Malte
34. Maurice
35. Mexique
36. Micronésie (États fédérés de)
37. Mongolie
38. Myanmar
39. Nauru*
40. Norvège
41. Nouvelle-Zélande
42. Oman*
43. Pakistan
44. Palaos
45. Panama
46. Pays-Bas
47. Pérou
48. Qatar
49. Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
50. République arabe syrienne
51. République de Corée
52. République populaire démocratique de Corée
53. Saint-Marin
54. Sénégal
55. Seychelles
56. Singapour
57. Slovaquie
58. Slovénie
59. Sri Lanka
60. Thaïlande
61. Timor-Leste
62. Tonga
63. Trinité-et-Tobago
64. Turquie
65. Uruguay
66. Viet Nam

*adhésion

Signataires qui non pas encore ratifié

1. Afghanistan
2. Albanie
3. Algérie
4. Angola
5. Antigua-et-Barbuda
6. Argentine
7. Autriche
8. Bahamas
9. Barbade
10. Belgique
11. Belize
12. Bolivie
13. Brésil
14. Bulgarie
15. Burkina Faso
16. Burundi
17. Bélarus
18. Bénin
19. Cambodge
20. Cameroun
21. Cap-Vert
22. Chili
23. Chine
24. Chypre
25. Communauté européenne
26. Comores
27. Congo
28. Costa Rica
29. Croatie
30. Cuba
31. Côte d'Ivoire
32. Djibouti
33. Dominique
34. El Salvador
35. Emirats arabes unis
36. Equateur
37. Estonie
38. États-Unis d'Amérique
39. Ethiopie
40. Gabon
41. Gambie
42. Grenade
43. Grèce
44. Guatemala
45. Guinée
46. Géorgie
47. Haïti
48. Iran (République islamique d')
49. Iraq
50. Irlande
51. Israël
52. Italie
53. Jamahiriya arabe libyenne
54. Jamaïque
55. Kazakhstan
56. Kirghizistan
57. Kiribati
58. Koweït
59. Liban
60. Libéria
61. Luxembourg
62. Malaisie
63. Mali
64. Maroc
65. Mauritanie
66. Mozambique
67. Namibie
68. Nicaragua
69. Niger
70. Nigéria
71. Nioué
72. Népal
73. Ouganda
74. Papouasie-Nouvelle-Guinée
75. Paraguay
76. Philippines
77. Pologne
78. Portugal
79. Roumanie
80. Rwanda
81. République centrafricaine
82. République de Moldova
83. République démocratique du Congo
84. République démocratique populaire lao
85. République tchèque
86. République-Unie de Tanzanie
87. Saint-Kitts-et-Nevis
88. Saint-Vincent-et-les-Grenadines
89. Sainte-Lucie
90. Samoa
91. Sao Tomé-et-Principe
92. Serbie et Montenegro
93. Soudan
94. Suisse
95. Suriname
96. Suède
97. Swaziland
98. Tchad
99. Togo
100. Tunisie
101. Tuvalu
102. Ukraine
103. Vanuatu
104. Venezuela
105. Yemen

WHO Framework Convention on Tobacco Control (FCTC)

Participants: Signatures and/or ratifications as of May 16, 2005

1. Afghanistan
2. Albania
3. Algeria
4. Angola
5. Antigua and Barbuda
6. Argentina
7. Armenia*
8. Australia
9. Austria
10. Bahamas, The
11. Bangladesh
12. Barbados
13. Belarus
14. Belgium
15. Belize
16. Benin
17. Bhutan
18. Bolivia
19. Botswana
20. Brazil
21. Brunei Darussalam
22. Bulgaria
23. Burkina Faso
24. Burundi
25. Cambodia
26. Cameroon
27. Canada
28. Cape Verde
29. Central African Republic
30. Chad
31. Chile
32. China
33. Comoros
34. Congo
35. Cook Islands
36. Costa Rica
37. Cote d'Ivoire
38. Croatia
39. Cuba
40. Cyprus
41. Czech Republic
42. Democratic People's Republic of Korea
43. Democratic Republic of the Congo
44. Denmark
45. Djibouti
46. Dominica
47. Ecuador
48. Egypt
49. El Salvador
50. Estonia
51. Ethiopia
52. European Community
53. Fiji
54. Finland
55. France
56. Gabon
57. Gambia, The
58. Georgia
59. Germany
60. Ghana
61. Greece
62. Grenada
63. Guatemala
64. Guinea
65. Haiti
66. Honduras
67. Hungary
68. Iceland
69. India
70. Iran (Islamic Republic of)
71. Iraq
72. Ireland
73. Israel
74. Italy
75. Jamaica
76. Japan
77. Jordan
78. Kazakhstan
79. Kenya
80. Kiribati
81. Kuwait
82. Kyrgyzstan
83. Lao People's Democratic Republic
84. Latvia
85. Lebanon
86. Lesotho
87. Liberia
88. Libyan Arab Jamahiriya
89. Lithuania
90. Luxembourg
91. Madagascar
92. Malaysia
93. Maldives
94. Mali
95. Malta
96. Marshall Islands
97. Mauritania
98. Mauritius
99. Mexico
100. Micronesia (Federated States of)
101. Mongolia
102. Morocco
103. Mozambique
104. Myanmar
105. Namibia
106. Nauru*
107. Nepal
108. Netherlands
109. New Zealand
110. Nicaragua
111. Niger
112. Nigeria
113. Niue
114. Norway
115. Oman*
116. Pakistan
117. Palau
118. Panama
119. Papua New Guinea
120. Paraguay
121. Peru
122. Philippines
123. Poland
124. Portugal
125. Qatar
126. Republic of Korea
127. Republic of Moldova
128. Romania
129. Rwanda
130. Saint Kitts and Nevis
131. Saint Lucia
132. Saint Vincent and the Grenadines
133. Samoa
134. San Marino
135. Sao Tome and Principe
136. Saudi Arabia
137. Senegal
138. Serbia and Montenegro
139. Seychelles
140. Singapore
141. Slovakia
142. Slovenia
143. Solomon Islands
144. South Africa
145. Spain
146. Sri Lanka
147. Sudan
148. Suriname
149. Syrian Arab Republic
150. Swaziland
151. Sweden
152. Switzerland
153. Thailand
154. Timor-Leste
155. Togo
156. Tonga
157. Trinidad and Tobago
158. Tunisia
159. Turkey
160. Tuvalu
161. Uganda
162. Ukraine
163. United Arab Emirates
164. United Kingdom of Great Britain and Northern Ireland
165. United Republic of Tanzania
166. United States of America
167. Uruguay
168. Vanuatu
169. Venezuela (Bolivarian Republic of)
170. Viet Nam
171. Yemen

*accession

Mise à jour de l'Etat de la Convention-cadre pour la lutte antitabac

La CCLAT OMS se trouve actuellement au Siège des Nations Unies à New Yorl Convention continue à être ouverte à la ratification, l'acceptation, l'approbat confirmation formelle et l'adhésion, et ce indéfiniment, pour les Etats souhai devenir Parties à la Convention.

Entrée en vigueur:

27 février 2005, conformément à l'article 36 qui se lit comme suit : "1. La présente Conventi en vigueur le quatre-vingt-dixième jour suivant la date du dépôt du quarantième instrument ratification, d'acceptation, d'approbation, de confirmation formelle ou d'adhésion auprès du D 2. À l'égard de chacun des États qui ratifie, accepte ou approuve la Convention, ou y adhère, les conditions énoncées au paragraphe 1 du présent article en ce qui concerne l'entrée en vig été remplies, la Convention entrera en vigueur le quatre-vingt-dixième jour suivant la date d par ledit État, de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion. de chacune des organisations d'intégration économique régionale déposant un instrument de confirmation formelle ou un instrument d'adhésion après que les conditions énoncées au para du présent article en ce qui concerne l'entrée en vigueur ont été remplies, la Convention entr vigueur le quatre-vingt-dixième jour suivant la date du dépôt, par ladite organisation, de son de confirmation formelle ou d'adhésion. 4. Aux fins du présent article, aucun des instruments par une organisation d'intégration économique régionale ne doit être considéré comme venan aux instruments déjà déposés par le États Membres de ladite organisation."

État:

Signataires de la CCLAT OMS: **168**
Parties à la CCLAT OMS: **66**

Participant	**Signature**	**Ratification, Acceptation (A), Approb (AA), Confirmation formelle (c), Adh**
Afghanistan	29 juin 2004	
Afrique du Sud	16 juin 2003	19 avril 2005
Albanie	29 juin 2004	
Algérie	20 juin 2003	
Allemagne	24 octobre 2003	16 décembre 2004
Angola	29 juin 2004	

Antigua-et-Barbuda	28 juin 2004	
Arabie saoudite	24 juin 2004	9 mai 2005
Argentine	25 septembre 2003	
Arménie		29 novembre 2004 a
Australie	5 décembre 2003	27 octobre 2004
Autriche	28 août 2003	
Bahamas	29 juin 2004	
Bangladesh	16 juin 2003	14 juin 2004
Barbade	28 juin 2004	
Bélarus	17 juin 2004	
Belgique	22 janvier 2004	
Belize	26 septembre 2003	
Bénin	18 juin 2004	
Bhoutan	9 décembre 2003	23 août 2004
Bolivie	27 février 2004	
Botswana	16 juin 2003	31 janvier 2005
Brésil	16 juin 2003	
Brunéi Darussalam	3 juin 2004	3 juin 2004
Bulgarie	22 décembre 2003	
Burkina Faso	22 décembre 2003	
Burundi	16 juin 2003	
Cambodge	25 mai 2004	
Cameroun	13 mai 2004	

Canada	15 juillet 2003	26 novembre 2004
Cap-Vert	17 février 2004	
Chili	25 septembre 2003	
Chine	10 novembre 2003	
Chypre	24 mai 2004	
Communauté européenne	16 juin 2003	
Comores	27 février 2004	
Congo	23 mars 2004	
Costa Rica	3 juillet 2003	
Côte d'Ivoire	24 juillet 2003	
Croatie	2 juin 2004	
Cuba	29 juin 2004	
Danemark	16 juin 2003	16 décembre 2004 *
Djibouti	13 mai 2004	
Dominique	29 juin 2004	
Egypte	17 juin 2003	25 février 2005
El Salvador	18 mars 2004	
Emirats arabes unis	24 juin 2004	
Equateur	22 mars 2004	
Espagne	16 juin 2003	11 janvier 2005
Estonie	8 juin 2004	
Etats-Unis d'Amérique	10 mai 2004	
Ethiopie	25 février 2004	
	3 octobre	

Fidji	2003	3 octobre 2003
Finlande	16 juin 2003	24 janvier 2005
France	16 juin 2003	19 octobre 2004 AA
Gabon	22 août 2003	
Gambie	16 juin 2003	
Géorgie	20 février 2004	
Ghana	20 juin 2003	29 novembre 2004
Grèce	16 juin 2003	
Grenade	29 juin 2004	
Guatemala	25 septembre 2003	
Guinée	1 avril 2004	
Haïti	23 juillet 2003	
Honduras	18 juin 2004	16 février 2005
Hongrie	16 juin 2003	7 avril 2004
Îles Cook	14 mai 2004	14 mai 2004
Îles Marshall	16 juin 2003	8 décembre 2004
Iles Salomon	18 juin 2004	10 août 2004
Inde	10 septembre 2003	5 février 2004
Iran (République islamique d')	16 juin 2003	
Iraq	29 juin 2004	
Irlande	16 septembre 2003	
Islande	16 juin 2003	14 juin 2004
Israël	20 juin 2003	
Italie	16 juin 2003	

Jamahiriya arabe libyenne	18 juin 2004	
Jamaïque	24 septembre 2003	
Japon	9 mars 2004	8 juin 2004 A
Jordanie	28 mai 2004	19 août 2004
Kazakhstan	21 juin 2004	
Kenya	25 juin 2004	25 juin 2004
Kirghizistan	18 février 2004	
Kiribati	27 avril 2004	
Koweït	16 juin 2003	
Lesotho	23 juin 2004	14 janvier 2005
Lettonie	10 mai 2004	10 février 2005
Liban	4 mars 2004	
Libéria	25 juin 2004	
Lituanie	22 septembre 2003	16 décembre 2004
Luxembourg	16 juin 2003	
Madagascar	24 septembre 2003	22 septembre 2004
Malaisie	23 septembre 2003	
Maldives	17 mai 2004	20 mai 2004
Mali	23 septembre 2003	
Malte	16 juin 2003	24 septembre 2003
Maroc	16 avril 2004	
Maurice	17 juin 2003	17 mai 2004
Mauritanie	24 juin 2004	

Mexique	12 août 2003	28 mai 2004
Micronésie (Etats fédérés de)	28 juin 2004	18 mars 2005
Mongolie	16 juin 2003	27 janvier 2004
Mozambique	18 juin 2003	
Myanmar	23 octobre 2003	21 avril 2004
Namibie	29 janvier 2004	
Nauru		29 juin 2004 a
Népal	3 décembre 2003	
Nicaragua	7 juin 2004	
Niger	28 juin 2004	
Nigéria	28 juin 2004	
Nioué	18 juin 2004	
Norvège	16 juin 2003	16 juin 2003 AA
Nouvelle-Zélande	16 juin 2003	27 janvier 2004
Oman		9 mars 2005 a
Ouganda	5 mars 2004	
Pakistan	18 mai 2004	3 novembre 2004
Palaos (République des)	16 juin 2003	12 février 2004
Panama	26 septembre 2003	16 août 2004
Papouasie-Nouvelle-Guinée	22 juin 2004	
Paraguay	16 juin 2003	
Pays-Bas	16 juin 2003	27 janvier 2005 A
Pérou	21 avril 2004	30 novembre 2004
Philippines	23 septembre	

	2003	
Pologne	14 juin 2004	
Portugal	9 janvier 2004	
Qatar	17 juin 2003	23 juillet 2004
République arabe syrienne	11 juillet 2003	22 novembre 2004
République centrafricaine	29 décembre 2003	
République de Corée	21 juillet 2003	16 mai 2005
République de Moldova	29 juin 2004	
République démocratique du Congo	28 juin 2004	
République démocratique populaire lao	29 juin 2004	
République populaire démocratique de Corée	17 juin 2003	27 avril 2005
République tchèque	16 juin 2003	
République-Unie de Tanzanie	27 janvier 2004	
Roumanie	25 juin 2004	
Royaume-Uni de Grande-Bretagne et d'Irlande du Nord	16 juin 2003	16 décembre 2004
Rwanda	2 juin 2004	
Saint-Kitts-et-Nevis	29 juin 2004	
Saint-Marin	26 septembre 2003	7 juillet 2004
Saint-Vincent-et-Grenadines	14 juin 2004	
Sainte-Lucie	29 juin 2004	
Samoa	25 septembre 2003	
Sao Tomé-et-Principe	18 juin 2004	
Sénégal	19 juin 2003	27 janvier 2005

Serbie et Monténégro	28 juin 2004	
Seychelles	11 septembre 2003	12 novembre 2003
Singapour	29 décembre 2003	14 mai 2004
Slovaquie	19 décembre 2003	4 mai 2004
Slovénie	25 septembre 2003	15 mars 2005
Soudan	10 juin 2004	
Sri Lanka	23 septembre 2003	11 novembre 2003
Suède	16 juin 2003	
Suisse	25 juin 2004	
Suriname	24 juin 2004	
Swaziland	29 juin 2004	
Tchad	22 juin 2004	
Thaïlande	20 juin 2003	8 novembre 2004
Timor-Leste	25 mai 2004	22 décembre 2004
Togo	12 mai 2004	
Tonga	25 septembre 2003	8 avril 2005
Trinité-et-Tobago	27 août 2003	19 août 2004
Tunisie	22 août 2003	
Turquie	28 avril 2004	31 décembre 2004
Tuvalu	10 juin 2004	
Ukraine	25 juin 2004	
Uruguay	19 juin 2003	9 septembre 2004
Vanuatu	22 avril 2004	
Venezuela (République	22 septembre	

bolivarienne du)	2003	
Viet Nam	3 septembre 2003	17 décembre 2004
Yémen	20 juin 2003	

* Avec l'exclusion territoriale suivante: "...jusqu'à nouvel ordre, le Protocole ne s'applique pa Féroé et au Groenland."

Note:

La Convention susmentionnée a été adoptée au cours de la cinquante-sixième Assemblée mc santé, qui a eu lieu au Palais des Nations à Genève, du 19 au 28 mai 2003. La Convention a à la signature de tous les États Membres de l'Organisation mondiale de la santé, ou de l'Orga des Nations Unies, ainsi que des organismes d'intégration économique régionale jusqu'au 29 La Convention se trouve actuellement au Siège de l'Organisation des Nations Unies à New Yc ouverte à la ratification, l'acceptation, l'approbation, la confirmation formelle et l'adhésion.

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Tobacco Control Act 002 no. 6, 31 January

Originally Act no. 74/1984 (took effect 1 Jan. 1985). Amended by Act no. 7/1996 (took effect 1 Oct. 1996), Act no. 101/1996 (took effect in accord with the provisions of art. 10 of the Act), Act no. 82/1998 (took effect 1 Oct. 1998) and Act no. 95/2001 (took effect 1 August 2001). Reissued cp. art. 17, Act no. 95/2001. Amended by Act no. 164/2002 (took effect 1 Jan. 2003)

Section I. Objectives, scope and administration

Art. 1

The objective of this Act is to reduce damage to health and fatalities caused by tobacco, by reducing tobacco consumption and protecting people from the effects of tobacco smoke.
Every person's right not to have to inhale air polluted by tobacco smoke from others, shall be respected.
Those who have care of a child shall seek to ensure that the child's rights under para. 2 are observed, including in places where smoking is not prohibited under Section III of this Act.

Art. 2

Tobacco within the meaning of this Act shall refer to tobacco plants (*nicotiana*) and all products made entirely or in part from them, for consumption, such as cigarettes, cigars, smoking tobacco, snuff and oral tobacco.
Smoking accessories within the meaning of this Act shall refer to tools and equipment relating to smoking of tobacco, such as cigarette papers, pipes, equipment for rolling cigarettes, and all similar goods.
Oral tobacco within the meaning of this Act shall refer to all products made entirely or partly from tobacco, for oral use, except those intended for smoking.
Chewing tobacco within the meaning of this Act shall refer to oral tobacco in pieces or strips; mainly intended for chewing.
Snuff within the meaning of this Act shall refer to powder or grains, made entirely or partly from tobacco, for nasal use.

Art. 3

This Act does not apply to tobacco used as a medication under the Pharmaceuticals Act, nor as a toxic substance under the Toxic and Hazardous Substances Act.

Art. 4

The highest authority in this field under this Act shall lie with the Minister of Health and Social Security.

Art. 5

The Minister shall appoint a Tobacco Control Board for a term of four years. The board shall comprise three people, of whom at least two shall have expertise in the field of the harmful effects of tobacco or tobacco control. Deputies shall be appointed in the same manner. The minister shall appoint one member of the board to be chair.
The role of the Tobacco Control Board is primarily:
1. To advise the government, the Minister of Health, [the Environmental Agency] Act no. 164/2002, art. 27, the Occupational Safety and Health Administration and other public bodies on all matters concerning tobacco control.
2. To submit proposals to the authorities on measures to counteract tobacco consumption, in accord with the provisions of this Act.
3. To urge and encourage a campaign of tobacco control, and to seek to coordinate tobacco control programmes in the country.
4. To provide advice and guidance regarding tobacco control, e.g. by providing literature and other sources of information.
5. To monitor tobacco consumption in Iceland.
6. To apply the experience and knowledge of other nations in the field of tobacco control.

The Minister of Finance shall confer with the Tobacco Control Board regarding policy-formation on importation and pricing of tobacco.
The board's opinion shall be elicited with regard to all regulations relevant to tobacco control and sales of tobacco.
The Tobacco Control Board shall collaborate with [the Environmental Agency] Act no. 164/2002, art. 27 and the Occupational Safety and Health Administration.
The Minister may issue regulations containing further provisions on the role and work of the Tobacco Control Board.

Section II. Sales and advertising.

Art. 6.

Tobacco may only be made available for sale or distribution if a warning appears on the packaging regarding the harmfulness of the product.
A cigarette packet shall be specifically labelled with information on tar and nicotine content.
The minister shall state in regulations Reg. 719/2002 more detailed provisions on such labelling, including the warning text, size, type of lettering, and other factors which may be significant.
A party who manufactures, imports or sells tobacco may not, without the consent of the Minister of Health and Social Security, place his own information regarding the health effects of consuming the product on the product's packaging, in words or symbols.
Tobacco manufacturers shall meet the costs of labelling under this article.

Art. 7

All forms of advertising of tobacco and smoking accessories is prohibited in Iceland. This does not apply, however, to publications published abroad by foreign parties in foreign languages, provided that their primary purpose is not the advertising of such products. Notwithstanding, the State Wine, Spirit and Tobacco Authority is authorised to issue a price list for tobacco and to publish a register of harmful substances in tobacco products.
It is also prohibited to show consumption or any form of handling of tobacco or smoking accessories in advertisements or information on goods or services of other kinds and in illustrations on goods.
Advertising within the meaning of this Act shall refer to, among other things:
1. any form of information addressed to the public or to a specified target group, including product promotions, window displays in shops, signs of any kind and comparable items.
2. all use of traditional tobacco trademarks (name and logo) or parts of them; products manufactured under such trademarks are, however, exempted, but the advertising-limitation provisions of the Act otherwise apply to them,
3. any form of media coverage of individual products for other purposes than to warn of their harmful effects.
4. distribution of samples of goods to consumers.
It is prohibited to place tobacco on the Icelandic market under trademarks which are known or used as trademarks for other goods or services.
Any form of contribution to an event or activity whose objective, or direct or indirect effect, is to promote tobacco, is prohibited.
Tobacco and tobacco trademarks shall be so placed at points of sale that they are not visible to the customer.

Art. 8

Tobacco may neither be sold nor delivered to individuals under the age of 18 years. A statement of this prohibition shall be displayed prominently where tobacco is for sale. In cases where the purchaser's age is in doubt, the sale can only be made if the customer shows by identification that he/she is at least 18 years old.
The importation, manufacture and sale of toys or confectionery made to resemble cigarettes, cigars or pipes, or intended to refer to tobacco by other means, e.g. pictorially, is prohibited.
Sale of tobacco from self-service machines is prohibited.
Sale of cigarettes in units of less than whole packets of 20 cigarettes is prohibited.
The importation, manufacture and sale of fine-grained snuff and all oral tobacco is prohibited, with the exception of chewing tobacco.
Tobacco may not be sold in schools, institutions for children and teenagers, or at health institutions.
Only persons who are at least 18 years of age may sell tobacco. The board of health of the relevant region may grant a temporary exemption from this provision regarding the age limit. The Minister of Health and Social Security shall issue regulations, on receipt of recommendations from the Occupational Safety and Health Administration, containing further provisions on exemptions from the age requirement.
The Minister of Health and Social Security issues regulations, in consultation with the Tobacco Control Board and in accord with current European Union directives, stating the maximum permissible levels of harmful substances in tobacco and tobacco smoke, and how measurements and monitoring of the observation of these limits shall be carried out.
For retail sale of tobacco, a special permit is required from the board of health of the relevant region. This permit shall

be granted for a term of four years, and will only be granted to individuals or businesses who/which fulfil the general requirements of legislation on commercial employment. Local authorities are permitted to collect a fee for permits and for monitoring the activities of permit-holders, on receipt of recommendations from boards of health. Such fees shall be in accord with para. 3 art. 12 of the Health and Pollution Control Act no. 7/1998, with subsequent amendments. The Minister of Health and Social Security may, in consultation with the Minister for the Environment, issue regulations stating further provisions on the granting of permits under this article.
Wholesalers of tobacco may not sell or deliver tobacco to others than those who have been granted a permit for retail sale of tobacco under this Act.

Section III. Restrictions on smoking

Art. 9

Smoking is prohibited in the service areas of institutions, business and voluntary organisations, and also at restaurants and places of entertainment, and where cultural and social activities take place, including sports and leisure activity.
Notwithstanding the provisions of para. 1, smoking may be permitted in restaurants and places of entertainment within specified areas, but adequate ventilation must be ensured, cf. para. 4. The majority of the space shall, however, invariably be smoke-free, and it must be ensured that access to it is not via a smoking area.
Notwithstanding the provisions of para. 1, smoking may be permitted in specified guest rooms of hotels and guesthouses. In hostels, smoking may not be permitted in rooms or dormitories.
Where smoking is permitted under this article, ventilation shall be ensured, meeting the requirements of the health inspectorate, and it shall be ensured that smoke does not pollute the atmosphere of non-smoking areas.
Restaurant management shall seek to protect staff against tobacco smoke.
The Minister of Health and Social Security may issue further rules on smoking in restaurants and places of accommodation in consultation with the Minister of Communications and Minister for the Environment, including provisions regarding classification of such facilities with regard to smoking and ventilation.
Smoking is prohibited in all common areas of shared-ownership properties.
The minister shall, in consultation with the Minister of Education and the Icelandic Sports and Olympic Federation, issue rules regarding restrictions on tobacco consumption out-of-doors at sports facilities.

Art. 10

Smoking is entirely prohibited:
1. In primary/lower secondary schools, local authority summer work-training programmes for children, pre-schools, all day-care facilities for children, and on premises primarily intended for children's and teenagers' social, sports and leisure activities.
2. At public gatherings indoors which are primarily intended for children or teenagers.
3. In upper-secondary schools and other secondary-level schools.
4. At health-care centres, doctors' surgeries and other places providing health services. This does not apply, however, to the rooms where residents of nursing homes and old people's homes live; but non-smokers must be offered non-smoking rooms.
5. In hospitals. Smoking by patients may, however, be permitted under special circumstances. The minister shall issue regulations containing further provisions on the implementation of exemptions.
6. In prison. Smoking may, however, be permitted in cells. Non-smokers must be offered non-smoking cells.
All other consumption of tobacco is also prohibited in primary/lower secondary schools, local authority summer work-training programmes for children, pre-schools, all day-care facilities for children, and on premises primarily intended for children's and teenagers' social, sports and leisure activities. The same applies to all gatherings primarily intended for teenagers.
Directors of all public institutions specified in para. 1 shall, in consultation with staff, draw up a plan regarding prohibition of smoking within the relevant institution, which shall be implemented no later than the end of the year 2000. Within each institution, however, it is permissible to allocate a space where smoking is allowed.

Art. 11

Management of premises to which the public have access, but which do not fall under the provisions of arts. 9 and 10 of this Act, may themselves decide to restrict smoking on the premises. This shall be clearly indicated on the premises, and the local authority board of health or the Occupational Safety and Health Administration shall be notified, as applicable under para. 1 art. 18, and the provisions of this Act shall then apply as relevant.

Art. 12

With the exceptions that may be entailed by paras. 2 and 3, art. 9, but cf. para. 5 of the same article, every person shall have a right to a smokeless atmosphere indoors in his/her workplace, and the employer shall ensure that his/her right is

observed.
The Minister of Health and Social Security shall issue rules in consultation with the Minister of Social Affairs and Minister of Communications regarding restrictions on smoking in the workplace, including aboard ship, in accord with para. 1 and taking account of art. 1 of this Act.

Art. 13
Smoking is prohibited in public transport facilities for which a fare is charged.
Aircraft operators may permit smoking in a part of the passenger cabin on international commercial flights which do not land in Iceland. It shall always be ensured, however, that this does not cause discomfort to non-smokers.

Section IV. Educational activities
Art. 14
The Ministry of Education shall, in consultation with the Ministry of Health and Social Security and the Tobacco Control Board, ensure that regular educational activity takes place with the objective of reducing tobacco consumption:
1. In Icelandic schools. Special emphasis shall be placed upon such education in primary/lower-secondary schools, and in colleges which train people for work in the child-care, education and health sectors.
2. In the media.
Education on the effects of tobacco consumption and means of reducing consumption shall be provided at health-care centres and hospitals.

Section V. General provisions
Art. 15
It is compulsory to allocate at least 0.9% of gross tobacco sales to tobacco control.
The funds shall be allocated by the Tobacco Control Board in consultation with the minister.

Art. 16
The minister may issue regulations stating further provisions regarding the implementation of the Act.

Section VI. Monitoring and penalties
Art. 17
Local authority boards of health, under the supervision of [the Environmental Agency] Act no. 164/2002, art. 27, shall monitor places where tobacco is sold, and monitor the observation in their district of the provisions of Section II of this Act, regarding labelling, advertising and sale of tobacco.
In the case of a violation of the provisions of Section II, if the local authority board of health's instructions are not complied with, the board may apply the same measures as are stated in art. 27 of the Health and Pollution Control Act no. 7/1998, with subsequent amendments.
Should a permit-holder under art 8. violate the terms of that article, the board of health in the relevant district may, after issuing a reprimand, revoke the permit. In the case of repeated violations, or gross violation, the board of health must revoke the permit.
In the case of a dispute regarding rulings of a local authority board of health, the case may be referred to an appeals board which operates under art. 31 of the Health and Pollution Control Act, no. 7/1998, with subsequent amendments.

Art. 18
Local authority boards of health, the Occupational Safety and Health Administration, the Icelandic Maritime Administration and the Civil Aviation Administration shall monitor, as applicable, observation of the provisions of Section III of this Act, in accord with the legislation applying to these agencies.
The minister issues regulations stating further provisions regarding implementation of monitoring.

Art. 19
A violation of the provisions of arts. 6 or 7, or regulations issued on the basis of this Act, relating to those articles, shall entail a fine or, in the case of gross or repeated violations, imprisonment for up to two years.
A violation of the provisions of art. 8, or rules issued on the basis of this Act, relating to this article, shall entail, in addition to revocation of permit under art. 17, fines.
With regard to an attempted violation or complicity in a violation, the provisions of the Criminal Code, Act no. 19/1940, shall apply.

Art. 20
A person who continues to smoke on premises or in a vehicle where smoking is prohibited under art. 9, 12 or 13, cf. also art. 11, shall be liable to a fine, provided that the person responsible for the premises or the driver of the vehicle has given a prior reprimand.
The same parties may expel the offender from the premises or vehicle, if he/she refuses to comply.

Art. 21
Cases which may arise in connection with violations of this Act and regulations issued on the basis of the Act, shall be subject to the rules of procedure in public cases.

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PUBLIC HEALTH (TOBACCO) ACT, 2002

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Irish Medicines Board Act, 1995	1995, No. 29
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Number 6 *of* 2002

PUBLIC HEALTH (TOBACCO) ACT, 2002

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE OFFICE OF TOBACCO CONTROL, TO PROVIDE FOR THE REGISTRATION OF PERSONS ENGAGED IN THE BUSINESS OF SELLING TOBACCO PRODUCTS BY RETAIL, TO PROVIDE FOR A PROHIBITION ON THE ADVERTISING OF TOBACCO PRODUCTS, A PROHIBITION ON SPONSORSHIP BY MANUFACTURERS AND IMPORTERS OF TOBACCO PRODUCTS AND PROHIBITIONS ON CERTAIN MARKETING PRACTICES IN RELATION TO TOBACCO PRODUCTS, TO PROVIDE FOR THE PROHIBITION OR RESTRICTION OF TOBACCO SMOKING IN CERTAIN PLACES, TO REPEAL THE TOBACCO PRODUCTS (CONTROL OF ADVERTISING, SPONSORSHIP AND SALES PROMOTION) ACT, 1978, AND THE TOBACCO (HEALTH PROMOTION AND PROTECTION) ACT, 1988, AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH. [27*th March*, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

Short title and commencement.

1.—(1) This Act may be cited as the Public Health (Tobacco) Act, 2002.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions and for the repeal of different enactments effected by *subsection (1)* of *section 8* and the revocation of different (or different provisions of) regulations effected by *subsection (3)* of that section.

Interpretation.

2.—(1) In this Act, except where the context otherwise requires—

"Act of 1970" means the Health Act, 1970;

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"Act of 1978" means the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act, 1978;

"Act of 1988" means the Tobacco (Health Promotion and Protection) Act, 1988;

"advertisement" includes, in relation to a tobacco product, every form of recommendation of the product to the public and in particular—

(*a*) (i) a statement of the name of a manufacturer or importer of a tobacco product, the name of any brand of tobacco product, or

(ii) a statement of any trade description or designation, or a display or other publication of a trademark, emblem, marketing image or logo, by reference to which the product is marketed or sold,

in circumstances where such statement, display or publication may reasonably be regarded as a recommendation of the product to the public, and

(*b*) a statement of the properties of the product on a label, container, wrapper or package used for the product or in a leaflet, circular, pamphlet or brochure issued to the public or given to a purchaser of the product,

and cognate words shall be construed accordingly;

"authorised officer" means a person appointed under *section 48*;

"chief executive" has the meaning assigned to it by *section 28*;

"designated analyst" has the meaning assigned to it by *section 51*;

"designated laboratory" has the meaning assigned to it by *section 51*;

"functions" includes powers and duties and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the performance of the duties;

"health board" means—

(*a*) a board established under section 4 of the Act of 1970, or

(*b*) an Area Health Board established by section 14 of the Health (Eastern Regional Health Authority) Act, 1999;

"licensed premises" has the same meaning as it has in the Intoxicating Liquor Act, 1988;

"Minister" means the Minister for Health and Children;

"Office" means the Office of Tobacco Control established under *section 9*;

"public service vehicle" means a mechanically propelled vehicle used for the carriage of persons for reward and having seating accommodation for more than 8 persons exclusive of the driver;

"register" has the meaning assigned to it by *section 37*;

"registered club" has the same meaning as it has in the Registration of Clubs Acts, 1904 to 2000;

"registration number" has the meaning assigned to it by *section 37*;

"smoke" in relation to a tobacco product, includes sniffing, chewing or sucking of such a product;

"specified place" has the meaning assigned to it by *section 47*;

"superannuation benefit" means a pension, gratuity or other allowance payable on resignation, retirement or death;

"tobacco product" means—

(*a*) any product consisting, in whole or in part, of tobacco, that is intended to be smoked,

(*b*) a tobacco product within the meaning of the Finance (Excise Duty on Tobacco Products) Act, 1977 (inserted by section 86(1) of the Finance Act, 1997),

(*c*) any cigarette paper, tube or filter manufactured for use in the smoking of tobacco,

other than a medicinal product within the meaning of the Irish Medicines Board Act, 1995.

(2) In this Act—

(*a*) a reference to a Part or section is a reference to a Part or section of this Act, unless it is indicated that a reference to some other enactment is intended,

(*b*) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and

(*c*) a reference to any enactment or regulations shall be construed as a reference to that enactment or those regulations, as the case may be, as amended, adapted or extended whether before or after the commencement of this subsection, by or under any subsequent enactment.

(3) For the purposes of this Act, a company within the meaning of the Companies Acts, 1963 to 2001, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business in the State.

Orders and regulations.

3.—Every order (other than an order under *section 1(2)*) and regulation under this Act shall be laid by the Minister before each House

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of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Expenses.

4.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Offences and penalties.

5.—(1) A person guilty of an offence under *section 20* shall be liable on summary conviction to a fine not exceeding €1,900, or to imprisonment for a term not exceeding 6 months, or to both.

(2) A person guilty of an offence under *section 37(13), 43, 45, 46, 47* or *48* shall be liable on summary conviction to a fine not exceeding €1,900, or to imprisonment for a term not exceeding 3 months, or to both.

(3) A person guilty of an offence under *section 33, 36, 37(14), 38, 39, 40, 42* or *53* shall be liable—

(*a*) on summary conviction to a fine not exceeding €1,900, or to imprisonment for a term not exceeding 3 months, or to both, or

(*b*) on conviction on indictment to a fine not exceeding €125,000, or to imprisonment for a term not exceeding 2 years, or to both.

(4) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under this Act as if, in lieu of the penalties specified in subsection (3)(*a*) of that section, there were specified therein the penalties provided for in *subsection (3)(a)*, and the reference in subsection (2)(*a*) of the said section 13 to the penalties provided for by subsection (3) shall be construed and have effect accordingly.

(5) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of such body corporate or a person who was purporting to act in any such capacity, that officer or person shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) On conviction for an offence under this Act the court may, in addition to any other penalty, order any tobacco product or any apparatus, equipment or thing to which the offence relates to be forfeited.

Proceedings.

6.—(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Office.

(2) Summary proceedings for an offence under this Act may be brought and prosecuted by the health board within whose functional area the offence is alleged to have been committed.

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted not later than 12 months from the date on which the Office or the health board concerned, as may be appropriate, forms the opinion that there exists sufficient evidence to justify instituting proceedings for the offence concerned, but in no case shall such proceedings be brought after 5 years from the date of the alleged commission of the offence. Pt.1 S.6

(4) References in section 382 of the Companies Act, 1963, to a company shall, for the purposes of this Act, be construed as including references to a body corporate (whether or not a company within the meaning of that section) charged on indictment with an offence under this Act.

Service of documents.

7.—A notice or other document under this Act shall be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways:

(*a*) by delivering it to the person,

(*b*) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address,

(*c*) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.

Repeals, saver and revocations.

8.—(1) The following enactments are hereby repealed, namely—

(*a*) the Act of 1978; and

(*b*) the Act of 1988.

(2) Notwithstanding *subsection (1)*, regulations made under the Act of 1978 or the Act of 1988 that are in force immediately before the commencement of that subsection shall, subject to *subsection (3)*, continue in force after such commencement.

(3) The following regulations are hereby revoked, namely—

(*a*) the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations, 1991 (S.I. No. 326 of 1991); and

(*b*) the Tobacco (Health Promotion and Protection) Regulations, 1995 (S.I. No. 359 of 1995).

PART 2

Office of Tobacco Control

Establishment of Office of Tobacco Control.

9.—(1) There is hereby established a body to be known as the Office of Tobacco Control (in this Act referred to as the "Office") to perform the functions assigned to it by this Act.

(2) The Office shall be a body corporate with perpetual succession and an official seal and shall have power to sue, and may be sued, in

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its corporate name and, with the consent of the Minister and the Minister for Finance, shall have power to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(3) The seal of the Office shall be authenticated by the signature of the chairperson of the Office, or by the signatures of both an ordinary member and a member of the staff of the Office authorised by the Office to act in that behalf.

(4) Judicial notice shall be taken of the seal of the Office and every document purporting to be an instrument made by, and to be sealed with the seal of, the Office (purporting to be authenticated in accordance with this section) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

Functions of Office.

10.—(1) The general functions of the Office shall be to—

(*a*) advise the Minister in relation to the formulation, and assist him or her in the implementation, of policies and objectives of the Government concerning the control and regulation of the manufacturing, sale, marketing and smoking of tobacco products,

(*b*) consult with such national or international bodies or agencies having a knowledge or expertise in the field of smoking prevention for the purpose of identifying measures designed to eliminate, reduce the incidence of, or discourage smoking,

(*c*) make such recommendations to the Minister as it deems appropriate in relation to measures that the Office considers should be taken in order to reduce or eliminate smoking or its effects in the State,

(*d*) undertake, sponsor or commission, or provide financial or other assistance for, research aimed at identifying measures that when adopted are likely to reduce the incidence of smoking or its effects,

(*e*) prepare and publish, in such manner as it thinks fit, reports on any research undertaken, sponsored or commissioned, or for which financial or other assistance was given, under *paragraph (d)*,

(*f*) furnish advice to the Minister, whenever he or she so requests, on matters relating to the control and regulation of the manufacture, importation, sale or supply of tobacco products and on measures to reduce, eliminate or discourage smoking,

(*g*) provide, and where appropriate exchange with the Garda Síochána and the Revenue Commissioners, information relating to the control and regulation of the manufacture, sale, supply, importation and distribution of tobacco products,

(*h*) prepare and implement a plan for the coordination nationally of the activities of the Office and of health boards in relation to this Act and the cooperation of the

Office and the health boards in the performance of their functions under this Act, PT.2 S.10

(*i*) furnish advice to the Minister, whenever he or she so requests, on matters relating to—

(i) strategies employed by manufacturers, importers, distributors or retailers of tobacco products in the marketing, sale or promotion of such products,

(ii) technology used in the manufacture, production or marketing of tobacco products,

(iii) any innovations on the part of manufacturers, importers, distributors or retailers of tobacco products relating to the manufacture, production or marketing of those products,

(*j*) coordinate and implement a programme for the inspection of all premises in which tobacco products are manufactured, stored, subjected to any process or sold by retail, and all premises to which the public have access, either as of right or with the permission of the occupier or person in charge of the premises concerned, for the purposes of ensuring that there is compliance with the provisions of this Act,

(*k*) collect or disseminate such information as may reasonably be necessary for the effective performance of its functions,

(*l*) furnish, whenever the Office considers it appropriate or is so requested by the Minister, advice or information to a Minister of the Government (including the Minister) in relation to any matter connected with its functions.

(2) The Office shall have all such powers as are necessary or expedient for the performance of its functions.

(3) The Office may perform any of its functions through or by a member of the staff of the Office duly authorised by the Office to act in that behalf.

Conferral of additional functions on Office.

11.—(1) The Minister may, with the consent of the Minister for Finance and after consultation with such other Minister of the Government (if any) as he or she considers appropriate, by order confer on the Office such additional functions connected with the functions for the time being of the Office as he or she thinks fit, subject to such conditions (if any) as may be specified in the order.

(2) An order under this section may contain such incidental, supplementary and consequential provisions as may, in the opinion of the Minister, be necessary to give full effect to the order.

(3) (*a*) The Minister may, by order, amend or revoke an order under this section (including an order under this subsection).

(*b*) An order under this subsection shall be made in the like manner, and its making shall be subject to the like consent and consultations (if any) as the order that it is amending or revoking.

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Membership of Office.

12.—(1) The Office shall consist of the following members, that is to say, a chairperson and 11 ordinary members.

(2) The members of the Office shall be appointed by the Minister.

(3) The chairperson of the Office shall hold office for a period of 5 years from the date of his or her appointment.

(4) An ordinary member of the Office shall hold office for such period not exceeding 5 years as the Minister may determine when appointing him or her.

(5) A member of the Office whose term of office expires by the effluxion of time shall be eligible for reappointment to the Office.

Conditions of office of members of Office.

13.—(1) The Minister may at any time remove from office a member of the Office.

(2) A member of the Office may resign from office by notice in writing given to the Minister and the resignation shall take effect on the date on which the Minister receives the notice.

(3) A member of the Office shall cease to be qualified for office and shall cease to hold office if—

(*a*) he or she is adjudicated bankrupt,

(*b*) he or she makes a composition or arrangement with creditors,

(*c*) he or she is convicted of any indictable offence in relation to a company,

(*d*) he or she is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not,

(*e*) he or she is the subject of an order under section 160 of the Companies Act, 1990, or

(*f*) he or she is sentenced to a term of imprisonment by a court of competent jurisdiction.

(4) A member of the Office shall, subject to the provisions of this Act, hold office upon such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Minister, with the consent of the Minister for Finance.

Casual vacancies among members of Office.

14.—(1) If a member of the Office dies, resigns, ceases to be qualified for office and ceases to hold office or is removed from office, the Minister may appoint a person to be a member of the Office to fill the casual vacancy so occasioned in the same manner as the member of the Office who occasioned the casual vacancy was appointed.

(2) A person appointed to be a member of the Office pursuant to this section shall hold office for that period of the term of office of the member who occasioned the casual vacancy concerned that remains unexpired at the date of his or her appointment and shall be eligible for reappointment as a member of the Office on the expiry of the said period.

Remuneration of members of Office.

15.—The chairperson and ordinary members of the Office shall be paid by the Office such remuneration (if any) and such allowances for expenses as the Minister, with the approval of the Minister for Finance, may determine.

Meetings and procedure.

16.—(1) The Office shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.

(2) At a meeting of the Office—

(*a*) the chairperson of the Office shall, if present, be the chairperson of the meeting, or

(*b*) if and so long as the chairperson of the Office is not present, or if that office is vacant, the members of the Office who are present shall choose one of their number to be chairperson of the meeting.

(3) Every question at a meeting shall be determined by a majority of the votes of the members of the Office present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(4) The Office may act notwithstanding one or more vacancies among its members.

(5) Subject to the provisions of this Act, the Office shall regulate its procedure by rules or otherwise.

(6) The quorum for a meeting of the Office shall, unless the Minister otherwise directs, be 7.

Membership of either House of Oireachtas or European Parliament.

17.—(1) Where a member of the Office is—

(*a*) nominated as a member of Seanad Éireann,

(*b*) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or

(*c*) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to that Parliament,

he or she shall thereupon cease to be a member of the Office.

(2) Where a member of the staff of the Office is—

(*a*) nominated as a member of Seanad Éireann,

(*b*) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or

(*c*) regarded pursuant to the said Part XIII, as having been elected to that Parliament,

he or she shall thereupon stand seconded from employment by the Office and shall not be paid by, or be entitled to receive from, the Office any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected (as the case may be), and ending

when such person ceases to be a member of either such House or a representative in such Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a representative in the European Parliament shall, while he or she is so entitled or is such a representative, be disqualified for membership of the Office or for employment in any capacity by the Office.

(4) A period mentioned in *subsection (2)* shall not, for the purposes of any superannuation benefit, be reckoned as service with the Office.

Disclosure by members of Office of certain interests.

18.—(1) Where at a meeting of the Office any of the following matters arises, namely—

(*a*) an arrangement to which the Office is a party or a proposed such arrangement, or

(*b*) a contract or other agreement with the Office or a proposed such contract or other agreement,

then, any member of the Office present at the meeting who otherwise than in his or her capacity as such a member has an interest in the matter shall—

(i) at the meeting disclose to the Office the fact of such interest and the nature thereof,

(ii) neither influence nor seek to influence a decision to be made in relation to the matter,

(iii) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,

(iv) take no part in any deliberation of the Office relating to the matter, and

(v) not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the Office a question arises as to whether or not a course of conduct, if pursued by a member of the Office, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question may be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Minister is satisfied that a member of the Office has contravened *subsection (1)*, the Minister may, if he or she thinks fit, remove that member from office and, in case a person is removed from office pursuant to this subsection, he or she shall thenceforth be disqualified for membership of the Office.

Disclosure by members of staff of certain interests.

19.—(1) Where a member of the staff of the Office has an interest, otherwise than in his or her capacity as such a member, in any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which the Office is a party, that person shall—

(*a*) disclose to the Office his or her interest and the nature thereof,

(*b*) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the Office or members of the staff of the Office in relation thereto, or

(*c*) neither influence nor seek to influence a decision to be made in the matter nor make any recommendation in relation to the contract, agreement or arrangement.

(2) *Subsection (1)* shall not apply to contracts or proposed contracts of employment of members of the staff of the Office with the Office.

(3) Where a person contravenes this section the Office may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment.

Prohibition of unauthorised disclosure of confidential information.

20.—(1) A person shall not disclose confidential information obtained by him or her while performing functions as—

(*a*) a member or member of the staff of, or an adviser or consultant to, the Office, or

(*b*) a member of a committee established under *section 21*,

unless he or she is duly authorised by the Office to so do.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

(3) In this section "confidential information" includes—

(*a*) information that is expressed by the Office to be confidential either as regards particular information or as regards information of a particular class or description, and

(*b*) proposals of a commercial nature or tenders submitted to the Office by contractors, consultants or any other person.

Committees of Office.

21.—(1) The Office may establish committees to advise it in relation to the performance of any or all of its functions and may determine the terms of reference and regulate the procedure of any such committee.

(2) A committee established under this section may include persons who are not members of the Office.

(3) A member of a committee established under this section may be removed from office at any time by the Office.

(4) The Office may at any time dissolve a committee established under this section.

(5) The Office may appoint a person to be chairperson of a committee established under this section.

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(6) There may be paid by the Office to members of a committee established under this section such allowances for expenses (if any) incurred by them as the Office may, with the consent of the Minister and the Minister for Finance, determine.

Tobacco Free Council.

22.—(1) The Office shall establish a body to be known as the Tobacco Free Council (hereafter in this section referred to as the "Council").

(2) The Council shall make themselves available to be consulted by the Office in relation to the performance by the Office of functions (of such a class as may be determined by the Office, with the consent of the Minister) and may give advice or an opinion to the Office regarding any matter (of such a class as may, with the consent of the Minister, be determined by the Office) falling to be decided by the Office or the performance by it of such functions.

(3) The Council shall consist of not more than 24 members of whom—

(*a*) 12 shall be appointed by the Minister, of whom not less than one shall be a person or persons nominated by such body or bodies as the Minister may determine being—

(i) (where the Minister makes a determination in relation to one body only) a body that has as its principal object, or

(ii) (where the Minister makes a determination in relation to more than one body) bodies that have as their principal objects,

the promotion of abstinence from smoking, and

(*b*) the remainder shall be appointed by the Office.

(4) The Office shall, after consultation with the Minister, determine the terms of reference and regulate the procedure of the Council.

(5) A member of the Council may be removed from office at any time—

(*a*) in the case of a member who is appointed by the Minister, by the Minister after consultation with the Office, and

(*b*) in the case of a member who was appointed by the Office, by the Office after consultation with the Minister.

(6) There may be paid by the Office to members of the Council such allowances for expenses (if any) incurred by them as the Office may, with the consent of the Minister and the Minister for Finance, determine.

(7) The Office shall have regard to any advice or opinion given by the Council in relation to any matter (of such a class as may be determined by the Office, with the consent of the Minister) falling to be decided by the Office or in relation to the performance of any function (of such a class as may be determined by the Office, with the consent of the Minister).

(8) The Office may publish any advice or opinion given to it by the Council. Pt.2 S.22

(9) The failure of the Office to consult the Council or to have regard to any advice or opinion of the Council in relation to any matter falling to be decided by the Office or the performance of any function by the Office shall not invalidate any decision taken or anything done by the Office.

(10) The Office and the Minister shall endeavour to ensure that, in so far as is practicable, there are equal numbers of men and women on the Council.

(11) The Office and the Minister shall, in so far as is practicable, endeavour to ensure that persons who have experience or expertise in matters relating to public health, entertainment, communications, sport, or who are representative of persons carrying on such trades, professions or commercial or industrial activities as the Office and the Minister may determine, are represented on the Council.

Grants to Office.

23.—The Minister may, with the consent of the Minister for Finance, advance to the Office out of moneys provided by the Oireachtas such sums as the Minister may determine.

Accounts and audits.

24.—(1) The Office shall keep in such form and in respect of such accounting periods as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by it, including an income and expenditure account, a cash flow statement and a balance sheet, and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister may, with the consent of the Minister for Finance, or at his or her request shall, from time to time direct.

(2) Accounts kept in pursuance of this section shall be submitted not later than 3 months after the end of the accounting period to which they relate by the Office to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the accounts, statement and balance sheet and of such other (if any) accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct, and a copy of the report of the Comptroller and Auditor General on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

(3) In this section "cash flow statement" means, in relation to an accounting period, an account showing the derivation of all moneys received by the Office during that period and the purposes to which they were applied.

Annual report.

25.—The Office shall not later than 3 months after the end of each financial year prepare and submit to the Minister a report on its activities in the immediately preceding financial year and the Minister shall, as soon as may be, cause copies of the report to be laid before each House of the Oireachtas.

Power to borrow.

26.—(1) The Office may, for the purpose of providing for current expenditure, from time to time borrow money (whether on the security of the assets of the Office or otherwise), but shall not do so without the consent of the Minister and the Minister for Finance.

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(2) The aggregate at any time of borrowings under *subsection (1)* shall not exceed €250,000.

Gifts.

27.—(1) The Office may accept gifts of money, land or other property upon such trusts or conditions (if any) as may be specified by the donor.

(2) The Office shall not accept a gift if the trusts or conditions attached to it would be inconsistent with its functions.

Chief executive.

28.—(1) There shall be a chief executive officer of the Office (who shall be known as and is referred to in this Act as the "chief executive").

(2) The chief executive shall carry on and manage, and control generally, the administration of the Office and perform such other functions (if any) as may be determined by the Office.

(3) The chief executive shall be appointed, and may be removed from office, by the Office, with the consent of the Minister.

(4) The chief executive shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Office with the consent of the Minister and the Minister for Finance.

(5) The chief executive shall not hold any other office or employment or carry on any business without the consent of the Office.

(6) The chief executive may attend meetings of the Office and may make submissions, orally or in writing, to and otherwise advise the Office at such meetings in accordance with the procedures of the Office under *section 16(5)*.

Staff.

29.—(1) The Office shall appoint, with the consent of the Minister and the Minister for Finance, such and so many persons to be members of the staff of the Office as it may from time to time determine.

(2) The terms and conditions of service of a member of the staff of the Office shall, with the consent of the Minister and the Minister for Finance, be such as may be determined from time to time by the Office.

(3) There shall be paid by the Office to the members of its staff such remuneration and allowances as, from time to time, the Office, with the consent of the Minister and the Minister for Finance, determines.

Remuneration of staff.

30.—The Office, in determining the remuneration or allowances for expenses to be paid to members of its staff or the other terms or conditions subject to which such members hold or are to hold their employment, shall have regard to Government or nationally agreed guidelines which are for the time being extant and to Government policy concerning remuneration and conditions of employment which is so extant and, in addition to the foregoing, the Office shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give to the Office with the consent of the Minister for Finance.

Transfer of staff to Office.

31.—(1) Every person (whether an officer of the Minister or not) who immediately before the commencement of this section is assigned to perform duties in relation to that part of the Department of State for which the Minister has charge known as the Office of Tobacco Control, and who is designated by the Minister for employment by the Office shall be transferred to and become a member of the staff of the Office on such day as may be specified by the Minister after consultation with the Office.

(2) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, while in the service of the Office be subject to less beneficial conditions of service (including conditions in relation to tenure of office) or of remuneration than the conditions of service (including conditions in relation to tenure of office) or remuneration to which he or she was subject immediately before the commencement of this section.

(3) In relation to persons transferred to the Office under *subsection (1)*, previous service in the civil service shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the Redundancy Payments Acts, 1967 to 2001, the Protection of Employees (Part-Time Work) Act, 2001, the Organisation of Working Time Act, 1997, the Minimum Notice and Terms of Employment Acts, 1973 to 2001, and the Unfair Dismissals Acts, 1977 to 2001.

Superannuation.

32.—(1) As soon as may be after its establishment, the Office shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such of its staff (including the chief executive) as the Office shall think fit.

(2) Every such scheme shall fix the time and conditions of retirement for all persons to, or in respect of whom, superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) The Office may at any time prepare and submit to the Minister a scheme amending a scheme previously submitted and approved under this section.

(4) A scheme or amending scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Office in accordance with its terms.

(5) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance whose decision shall be final.

(6) No superannuation benefit shall be granted by the Office to or in respect of any of its staff (including the chief executive) who are members of a scheme under this section, nor shall any other arrangement be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, other than in accordance with such scheme or schemes submitted and approved under this section.

(7) Where, in the period beginning on the commencement of *section 9* and ending immediately before the commencement of a

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scheme under this section, a superannuation benefit falls due for payment to or in respect of a person who was transferred to the staff of the Office under *section 31*, the benefit shall be calculated by the Office in accordance with such scheme, or such enactments in relation to superannuation, as applied to the person immediately before the commencement of the said *section 9* or such day as may be specified by the Minister under *section 31(1)* and, for that purpose, his or her pensionable service with the Office shall be aggregated with his or her previous pensionable service and shall be paid by the Office.

(8) The Minister shall cause every scheme submitted and approved under this section to be laid before each House of the Oireachtas as soon as may be after it is approved, and if either such House within the next 21 days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to anything previously done thereunder.

PART 3

Regulation and Control of Sale, Marketing and Smoking of Tobacco Products

Prohibition of advertising of tobacco products.

33.—(1) Subject to *sections 34* and *35*, a person who advertises, or causes the advertisement of, a tobacco product shall be guilty of an offence.

(2) It shall be an offence for a person to sell or cause to be sold, by retail, or otherwise supply or cause to be supplied, to a member of the public a product (other than a tobacco product) that bears—

(*a*) the name of the manufacturer of a tobacco product, or the name of any brand of tobacco product, or

(*b*) any trade description, designation, trademark, emblem, marketing image or logo by reference to which a tobacco product is marketed or sold.

Advertisements in foreign publications.

34.—(1) The Office may, upon the application in writing of a press distributor, exempt from the application of *section 33* advertising of tobacco products contained in such publications as are specified in the exemption concerned for such period (not exceeding one year) as is so specified, where it is satisfied that—

(*a*) the publication concerned has a circulation in the State—

(i) in the case of a daily or weekly publication, not exceeding 3,000, or

(ii) in the case of any other publication, not exceeding 1,000,

(*b*) it would not be practicable for economic reasons to require—

(i) the excision or omission from the publication of an advertisement the inclusion of which in a publication distributed in the State would, but for the granting of an exemption under this section, constitute an offence under *section 33*, or

(ii) the publisher concerned to produce an edition of the publication for distribution solely or mainly in the State,

(*c*) no part of the publication is printed specially or mainly for distribution in the State,

(*d*) any advertisement of tobacco products contained in the publication is lawful in the place where the publication is printed or first published,

(*e*) the publisher of the publication does not publish an edition thereof that does not contain advertisements of tobacco products,

(*f*) the publication is not produced solely or mainly for the purpose of promoting the smoking or sale of tobacco products, and

(*g*) the publication is not produced solely or mainly for sale or distribution to persons who have not attained the age of 18 years.

(2) *Section 33* shall not apply to an advertisement in a publication in respect of which an exemption under this section is in force.

(3) An exemption under this section shall be in writing.

(4) The Office may revoke an exemption under this section where, in respect of the publication concerned, it ceases to be satisfied in relation to any one or more of the matters specified in *subsection (1)*.

(5) In this section—

"press distributor" means a person who carries on the business of supplying newspapers, magazines or other periodicals to persons for the purpose of their selling those newspapers, magazines or periodicals by retail;

"publication" includes a newspaper, magazine or any other periodical.

Advertisements directed at persons engaged in the sale etc. of tobacco products.

35.—*Section 33* shall not apply to the advertising of tobacco products, in such form and subject to such conditions as may be prescribed by regulations made by the Minister, that is directed solely at persons who carry on, in whole or in part, the business of selling or distributing tobacco products.

Prohibition of sponsorship.

36.—(1) It shall be an offence for a person to give financial or other assistance, or cause financial or other assistance to be given, to or for the benefit of a person, or for or in relation to an event or activity, in consideration of the—

(*a*) use, display or advertising by the person, or at the event or activity concerned,

(*b*) association with the person, event or activity, or

(*c*) promotion,

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of a tobacco product, the name of a tobacco manufacturer or importer, the name of a brand of tobacco product or a trademark, emblem, marketing image or logo used in the marketing of a tobacco product.

(2) It shall be an offence for a person to receive financial or other assistance to which *subsection (1)* applies.

Register of retailers of tobacco products.

37.—(1) The Office shall, on the commencement of this section, cause to be established and maintained a register of all persons who carry on, in whole or in part, the business of selling tobacco products by retail (hereafter in this Act referred to as "the register").

(2) The Office may, for the purpose of defraying any expense incurred in establishing or maintaining the register, charge each person registered under this section a fee of such amount as may be determined by the Minister (in this section referred to as the "appropriate fee").

(3) Where a person proposes to carry on, in whole or in part, the business of selling tobacco products by retail he or she shall, in accordance with this section, apply to the Office to be registered in the register.

(4) A person who immediately before the commencement of this section was carrying on, in whole or in part, the business of selling tobacco products by retail shall, if he or she wishes to continue carrying on that business, apply, not later than 3 months after such commencement, to the Office to be registered in the register.

(5) An application under this section shall—

(*a*) be in writing,

(*b*) specify the name of the applicant and the address at which he or she ordinarily resides,

(*c*) specify the address of each premises at which the applicant carries on, in whole or in part, the business of selling tobacco products by retail,

(*d*) contain such other information as may be prescribed by regulations made by the Minister,

and shall be accompanied by the appropriate fee.

(6) As soon as practicable after an application under this section, in respect of which there is compliance with *subsection (5)*, is received by the Office, the Office shall, subject to *subsection (9)*, enter in the register—

(*a*) the applicant's name and the address at which he or she ordinarily resides,

(*b*) the address of each premises at which he or she carries on, in whole or in part, the business referred to in *subsection (1)*,

(*c*) a number from which it will be possible to identify the applicant (in this Act referred to as the "registration number"),

(*d*) the names of the persons who supply the applicant with tobacco products in connection with his or her business, and Pt.3 S.37

(*e*) such other particulars as the Office considers appropriate,

and a person shall, upon the Office so entering the matters specified in this subsection in relation to him or her, be registered for the purposes of this section.

(7) If a person, who is registered under this section, is convicted of an offence under this Act, and the offence relates to or was committed on premises in respect of which the person carries on, in whole or in part, the business of selling tobacco products by retail (being premises in respect of which the person is for the time being so registered) the Office shall, in circumstances where the person is so registered in respect of premises other than the first-mentioned premises, remove the address of the first-mentioned premises from the register, and such person shall not, before the expiration of—

(*a*) the period of 3 months (in the case of a person convicted summarily of an offence), or

(*b*) the period of one year (in the case of a person convicted of an offence on indictment),

from the address being so removed, be eligible to be registered under this section in respect of the premises concerned, and the Office shall not, until such expiration, perform, in relation to any application by the person under this section, any function under *subsection (6).*

(8) If a person, who is registered under this section, is convicted of an offence under this Act, and the offence relates to or was committed on premises in which the person carries on, in whole or in part, the business of selling tobacco products by retail (being the only premises in respect of which the person is for the time being so registered) the Office shall remove from the register that person's name, the address of those premises, the registration number in respect of him or her and any other particulars entered in the register relating to him or her, and such person shall not, before the expiration of—

(*a*) the period of 3 months (in the case of a person convicted summarily of an offence), or

(*b*) the period of one year (in the case of a person convicted of an offence on indictment),

from his or her being so removed, be eligible to be registered under this section in respect of those premises, and the Office shall not, until such expiration, perform, in relation to any application by the person under this section, any function under *subsection (6).*

(9) Where a person, who has made an application under *subsection (3)* in respect of which the Office has not yet performed a function under *subsection (6),* is convicted of an offence under this Act, that person shall not be eligible to be registered under this section before the expiration of—

(*a*) the period of 3 months (in the case of a person convicted summarily of an offence), or

(*b*) the period of one year (in the case of a person convicted of an offence on indictment),

from him or her being so convicted, and the Office shall not during that period perform any function under *subsection (6)* in relation to his or her application.

(10) Where a person to whom *subsection (4)* applies is convicted of an offence under this Act during the 3 month period referred to therein he or she shall not be eligible to be registered under this section before the expiration of—

(*a*) the period of 6 months (in the case of a person convicted summarily of an offence), or

(*b*) the period of 15 months (in the case of a person convicted of an offence on indictment),

from the commencement of this section and the Office shall not during the said period of 6 months or the said period of 15 months, as the case may be, perform any function under *subsection (6)* in relation to an application under this section by him or her after his or her being so convicted.

(11) A person registered in the register shall, if a particular entered in the register in accordance with *subsection (6)* ceases to be correct, so inform the Office as soon as may be.

(12) The Office shall upon becoming aware that any particular entered in the register is incorrect or has ceased to be correct make such alterations to the register as it considers necessary.

(13) A person who, in purported compliance with *subsection (5)*, knowingly or recklessly provides information or a particular to the Office that is false or misleading in a material respect, or who believes any such information or particular provided by him or her, in purported compliance with that subsection, not to be true, shall be guilty of an offence.

(14) Subject to *subsection (15)*, it shall be an offence for a person to sell a tobacco product, or cause a tobacco product to be sold, by retail.

(15) (*a*) It shall be lawful for a person to sell a tobacco product, or cause a tobacco product to be sold by retail, in accordance with this Act, from premises in respect of which he or she is registered under this section.

(*b*) It shall be lawful for a person who immediately before the commencement of this section carried on, in whole or in part, the business of selling tobacco products by retail to sell a tobacco product, or cause a tobacco product to be sold, by retail, in accordance with this Act, during the period of 3 months after such commencement from premises (being premises in respect of which he or she is not registered under this section) in which, immediately before such commencement, he or she carried on such business.

(*c*) It shall be lawful for a person to whom *paragraph (b)* applies and who has made an application under *subsection (4)* in respect of premises to which that subsection applies to sell a tobacco product, or cause a tobacco product to be sold, by retail, in accordance with this Act, during the period of 12 months after the expiration of the period of 3 months referred to in that subsection, from

such premises (being premises in respect of which he or she is not registered under this section). Pt.3 S.37

Prohibition of certain marketing practices.

38.—(1) It shall be an offence for a person to sell cigarettes by retail other than in a packet containing not less than 20 cigarettes.

(2) It shall be an offence for a person to manufacture, import, supply, sell or invite an offer to purchase an oral smokeless tobacco product.

(3) It shall be an offence for a person to sell confectioneries normally intended for sale to children, that have been manufactured in such a way as to resemble in appearance a type of tobacco product.

(4) It shall be an offence for a person to—

(*a*) import,

(*b*) sell (by retail or otherwise), or

(*c*) otherwise supply to, or invite an offer to purchase by, any person,

a tobacco product, the packaging of which does not bear a warning in such form and of such a type as may be prescribed by regulations made by the Minister, that is intended to inform the public that the consumption of the product is injurious to health, and a statement containing such other information as may be so prescribed in such form as may be so prescribed.

(5) It shall be an offence for a person to—

(*a*) import,

(*b*) sell (by retail or otherwise), or

(*c*) otherwise supply to, or invite an offer to purchase by, any person,

a tobacco product, the packaging of which does not bear a number in such form as may be prescribed by regulations made by the Minister, that enables the lot or batch from which the product originated and the date and place of its manufacture to be ascertained.

(6) It shall be an offence for a person to supply free of charge to a member of the public any tobacco product for the purpose of promoting the consumption of that product.

(7) It shall be an offence for a person to supply or sell to a member of the public any voucher, coupon or other document or thing (intended to be used as a substitute for money) for the purpose of its being—

(*a*) used as payment or payment in part, or

(*b*) otherwise exchanged,

for a tobacco product.

(8) It shall be an offence for a person to sell a tobacco product by retail, or supply a tobacco product to, or invite an offer to purchase by, a member of the public of a tobacco product where part of the

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consideration to be given to the purchaser is a gift, token, trading stamp, coupon or other document or thing that may be exchanged for or used as payment or payment in part for certain goods.

(9) The Minister may, for the purpose of ensuring that the price at which a tobacco product is sold does not constitute a sales promotion device, by regulations make such provision in relation to the price at which tobacco products or tobacco products of such class as may be specified in the regulations may be sold as he or she considers appropriate.

(10) A person who sells or invites an offer to purchase a tobacco product in contravention of regulations under *subsection (9)* shall be guilty of an offence.

Specifications in relation to tobacco products.

39.—(1) Such tobacco products and such classes of tobacco products as may be prescribed by regulations made by the Minister shall comply with such standards and requirements relating to their manufacture, importation, distribution and sale as may be so prescribed.

(2) A person who manufactures or imports, or who sells (whether by retail or otherwise) or invites an offer to purchase, a tobacco product in relation to which there is a contravention of regulations under this section shall be guilty of an offence.

Requirement to provide information on and test tobacco products.

40.—(1) A manufacturer or importer of tobacco products shall provide the Office with such information (within such period as it may, from time to time by notice in writing, require) relating to—

(*a*) the tobacco products concerned,

(*b*) tobacco products of such a class as the Office may specify, or

(*c*) tobacco products that are sold under such brand name as may be so specified,

including information relating to their composition or properties, and to their sale or marketing.

(2) The Office may by notice in writing require the manufacturer or importer of a tobacco product to carry out such tests as are specified in the notice on such tobacco products manufactured by him or her as are so specified.

(3) The manufacturer or importer of a tobacco product shall, when carrying out a test pursuant to a requirement under *subsection (2)*, permit such person as may be specified in a notice under that subsection to attend at the place or places where such test is carried out and observe its being carried out.

(4) A manufacturer or importer who carries out a test pursuant to a notice under *subsection (2)* shall, not later than 14 days from its obtaining the results of the test, furnish the Office with a statement of those results which shall contain such information and be in such form as the Office may specify.

(5) A person who contravenes this section or a requirement under this section shall be guilty of an offence.

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Publication of certain information etc.

41.—(1) The Office may publish such information and such results of tests received under *section 40* in such manner as it considers appropriate.

(2) Where the Office proposes to publish information or results of tests under *subsection (1)* it shall, not later than 21 days before so doing, notify the manufacturer or importer concerned, in writing, that it so proposes.

(3) The High Court may, if of the opinion that the publication of information or the results of tests in accordance with *subsection (1)* would result in the disclosure of a secret manufacturing process, direct the Office not to publish such information or results, upon application being made to the High Court in that behalf by the manufacturer or importer concerned.

(4) An application referred to in *subsection (3)* may be brought not later than 7 days from the receipt of the notification under *subsection (2).*

(5) The Office shall comply with a direction under *subsection (3).*

(6) Proceedings under *subsection (3)* shall be held *in camera.*

Prohibition on certain assertions in relation to tobacco products.

42.—(1) Where the packaging of a tobacco product or any printed material attached to or accompanying a tobacco product or such packaging—

(*a*) bears an assertion that—

(i) smoking does not cause life threatening diseases,

(ii) the smoking or consumption of one brand or class of tobacco product is less harmful than the smoking or consumption of others,

(iii) the smoking of tobacco products is not addictive,

(iv) filters attached to, additives to or other ingredients of a tobacco product render it less harmful than tobacco products that do not have a filter, or contain such additives or ingredients,

(*b*) bear the words "low tar", "light", "ultra light", "mild", or such similar words or terms as may be prescribed by regulations made by the Minister in a manner that implies that the tobacco product or brand concerned is less harmful than other tobacco products or brands of tobacco product, as the case may be,

the manufacturer, importer and distributor of the tobacco product concerned shall each be guilty of an offence.

(2) It shall be an offence for a person to sell by retail a tobacco product where the package containing the product bears an assertion referred to in *subsection (1)(a)* or words referred to in *subsection (1)(b).*

Offences relating to sale by retail of tobacco products.

43.—(1) Subject to *subsection (2),* it shall be an offence for a person to sell a tobacco product by retail, or cause a tobacco product to be sold by retail, by means of self service.

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(2) It shall be lawful for tobacco products to be sold by retail, in accordance with regulations made by the Minister, by means of a vending machine on licensed premises or the premises of a registered club by such persons, or by persons belonging to such classes of persons, as are specified in the regulations (being persons who are registered under *section 37* in respect of the licensed premises concerned or the premises of the registered club concerned).

(3) A person registered under *section 37* (other than a person to whom regulations under *subsection (2)* apply) shall ensure that tobacco products sold by him or her are kept in a closed container or dispenser that is not visible or accessible to any person other than the first-mentioned person, or a person employed by him or her in connection with the business of selling goods by retail while so employed.

(4) A person registered under *section 37* shall ensure that—

(*a*) the registration number in respect of him or her is affixed to the container, dispenser or vending machine, as the case may be,

(*b*) subject to *paragraph (c)* and the European Communities (Requirements to Indicate Product Prices) Regulations, 2001 (S.I. No. 422 of 2001)—

(i) no notice, sign or display shall be displayed, and

(ii) no leaflet, circular, pamphlet or brochure shall be issued to the public or given to a purchaser of a product,

at any place, indicating that tobacco products may be purchased at the premises concerned,

(*c*) a sign is displayed at the premises concerned—

(i) in such a manner and form as may be prescribed by regulations made by the Minister,

(ii) informing the public that tobacco products may be sold at those premises to persons who have attained the age of 18 years, and

(iii) providing such other information as may be so prescribed.

(5) A person who contravenes *subsection (3)* or *(4)* shall be guilty of an offence.

(6) For the purposes of *subsection (1)*, a tobacco product shall be deemed to be sold by means of self service where the purchaser is permitted to supply himself or herself, either upon or before payment, with the tobacco product concerned whether by means of the depositing of money or a token (intended to be used as a substitute for money) in a machine containing the tobacco product or otherwise.

Exemption from *section 43*.

44.—(1) This section shall apply to a person who carries on in whole the business of selling—

(*a*) tobacco products, or

(*b*) products used for the purposes of or in connection with smoking, Pt.3 S.44

by retail, other than a person who carries on in whole such business being a subsidiary of a company that does not carry on in whole such business.

(2) The Minister may issue a certificate to a person to whom this section applies, upon application being made in that behalf by that person, stating that *section 43* shall not apply to him or her in respect of such premises as are specified in the certificate, and accordingly, where the Minister issues such a certificate, *section 43* shall not apply to the person in relation to those premises while such certificate remains in force.

(3) The Minister shall not issue a certificate where—

(*a*) the person making the application concerned is in contravention of regulations under this section, or

(*b*) there is a contravention of such regulations in respect of the premises to which the application concerned relates.

(4) The Minister may make regulations for the purposes of this section, and, without prejudice to the generality of the foregoing, such regulations may provide—

(*a*) for the minimum size of premises to which a certificate under this section shall apply,

(*b*) that such premises shall not form part of another premises in which products other than those referred to in *subsection (1)* are sold,

(*c*) for the proportion of tobacco products that may be sold in the form of cigarettes on those premises,

(*d*) for the form of an application under this section and the information and documentation that shall accompany such application,

(*e*) for the payment of fees by a person who makes an application under this section, for the purposes of defraying expenses incurred in considering such application or issuing a certificate under this section, or

(*f*) the period in respect of which a certificate under this section shall continue in force.

(5) The Minister may revoke a certificate under this section if—

(*a*) the person to whom the certificate is issued—

(i) contravenes regulations under this section, or

(ii) ceases to be a person to whom this section applies,

or

(*b*) there is a contravention of such regulations in relation to the premises concerned.

(6) In this section "subsidiary" has the same meaning as it has in section 155 of the Companies Act, 1963.

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Prohibition on sale of tobacco products to persons under 18 years of age.

45.—(1) It shall be an offence for a person to sell a tobacco product by retail, or supply a tobacco product, to, or invite an offer to purchase a tobacco product by, a person who has not attained the age of 18 years.

(2) In proceedings for an offence under *subsection (1)* it shall be a defence for the person against whom such proceedings are brought to prove that—

(*a*) he or she made all reasonable efforts to satisfy himself or herself that the person to whom the alleged offence relates had at the time of the alleged commission of the offence attained the age of 18 years, or

(*b*) the person specified in *paragraph (a)* produced to the first-mentioned person an age card, for the time being in force, relating to the person so specified.

(3) In proceedings for an offence under *subsection (1)* the court may have regard to a person's physical appearance or attributes for the purpose of determining whether that person is under the age of 18 years or was, at the time of the alleged commission of the offence to which the proceedings relate, under the age of 18 years.

(4) In this section "age card" has the same meaning as it has in Part IV of the Intoxicating Liquor Act, 1988.

Display of signs.

46.—(1) There shall be displayed at all times at all premises (in which or in part of which the smoking of tobacco products is permitted) to which members of the public have access, either as of right or with the permission of the occupier of those premises, a sign indicating clearly those parts of the premises in which smoking is permitted and those parts of the premises in which smoking is not permitted, and each such sign shall display the name of the occupier or other person in charge of the premises concerned and the name of the person to whom a complaint may be made by a member of the public for the time being present on the premises who observes another person smoking a tobacco product in a part of the premises in which smoking is not permitted.

(2) There shall be displayed at all times in a public service vehicle a sign stating that smoking is not permitted in that vehicle.

(3) Where there is a contravention of *subsection (1)*, the occupier and person in charge of the premises concerned shall each be guilty of an offence.

(4) Where there is a contravention of *subsection (2)*, the owner and person in charge of the public service vehicle concerned shall each be guilty of an offence.

(5) In this section "owner", when used in relation to a mechanically propelled vehicle that is the subject of a hire-purchase agreement, means the person entitled to be in possession of the vehicle under the agreement.

Prohibition or restriction on smoking of tobacco products.

47.—(1) The Minister may, by regulations, prohibit or restrict the smoking of tobacco products in—

(*a*) an aircraft, train, ship or other vessel, public service vehicle, or a vehicle used for the carriage of members of the public for reward other than a public service vehicle,

(*b*) all or part of—

(i) a health premises, or

(ii) a hospital that is not a health premises,

(*c*) all or part of a school or college,

(*d*) all or part of a building to which the public has access, either as of right or with the permission of the owner or occupier of the building, and which belongs to, or is in the occupation of—

(i) the State,

(ii) a Minister of the Government,

(iii) the Commissioners of Public Works in Ireland, or

(iv) a body established by or under an Act of the Oireachtas,

(*e*) a cinema, theatre, concert hall or other place normally used for indoor public entertainment,

(*f*) all or part of a licenced premises, registered club, or place of work, or

(*g*) all or part of any other premises or place,

generally or of such a class as may be specified in the regulations (hereafter in this Act referred to as a "specified place").

(2) Regulations under this section may revoke regulations made under section 2 of the Act of 1988 and regulations under the said section 2 shall notwithstanding *section 8* continue in operation as if made under this section.

(3) Any person who contravenes a provision of regulations made under this section shall be guilty of an offence.

(4) Where in relation to a specified place there is a contravention of regulations under this section the occupier, manager and any other person for the time being in charge of the place shall each be guilty of an offence.

(5) In proceedings for an offence under this section, it shall be a defence for a person against whom such proceedings are brought to show that he or she made all reasonable efforts to ensure compliance with such provisions of regulations under this section as are alleged to have been contravened.

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(6) In this section—

"college" means a university, institute of technology or other establishment at which third level education is provided;

"health premises" means any hospital, sanatorium, home, laboratory, clinic, health care centre or similar premises required for the provision of services under the Health Acts, 1947 to 2001, provided and maintained by a health board under section 38 of the Act of 1970;

"place of work" has the same meaning as it has in the Safety, Health and Welfare at Work Act, 1989;

"school" has the same meaning as it has in the Education Act, 1998.

Authorised officer.

48.—(1) The chief executive of the Office shall appoint such one or more persons, as he or she considers appropriate, to be an authorised officer or authorised officers for the purposes of this Act.

(2) The chief executive officer of a health board shall, in relation to the functional area of that health board, appoint such one or more persons, as he or she considers appropriate, to be an authorised officer or authorised officers for the purposes of this Act.

(3) A person appointed to be an authorised officer under this section shall, on his or her appointment, be furnished—

(*a*) in the case of a person appointed under *subsection (1)*, by the Office, and

(*b*) in the case of a person appointed under *subsection (2)*, by the health board concerned,

with a warrant of his or her appointment, and when exercising a power conferred by this Act shall, if requested by any person thereby affected, produce such warrant to that person for inspection.

(4) An authorised officer may, for the purposes of this Act—

(*a*) at all reasonable times enter (if necessary by the use of reasonable force), subject to *subsection (6)*, any premises at which he or she has reasonable grounds for believing that—

(i) any trade, business or activity connected with the manufacture, processing, disposal, exportation, importation, distribution, sale, storage, packaging or labelling of a tobacco product is or has been carried on, or

(ii) records relating to such trade, business or activity are kept,

(*b*) at all reasonable times enter (if necessary by the use of reasonable force) any specified place,

(*c*) at such premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he or she finds in the course of his or her inspection,

(*d*) remove any such books, records or documents from such premises and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,

(*e*) carry out, or have carried out, such examinations, tests, inspections and checks of—

(i) the premises,

(ii) any tobacco product or any article or substance used in the manufacture, processing or storage of tobacco products, at the premises, or

(iii) any equipment, machinery or plant at the premises,

as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,

(*f*) require any person at the premises or the owner or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her such books, documents or other records (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under this Act,

(*g*) take samples of any tobacco product or any article or substance used in the manufacture, processing or storage of tobacco products found at the premises for the purposes of analysis and examination,

(*h*) direct that such tobacco products found at the premises as he or she, upon reasonable grounds, believes contravene a provision of this Act not be sold or distributed or moved from the premises, without his or her consent,

(*i*) secure for later inspection any premises or part of any premises in which a tobacco product, substance or article is found or ordinarily kept, or records, books or documents are found or ordinarily kept, for such period as may reasonably be necessary for the purposes of his or her functions under this Act, or

(*j*) take possession of and remove from the premises for examination and analysis any tobacco product or any substance or article used in the manufacture, processing or storage of tobacco products found there, and detain them for such period as he or she considers reasonably necessary for the purposes of his or her functions under this Act.

(5) When performing a function under this Act, an authorised officer may, subject to any warrant under *subsection (7)*, be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.

(6) An authorised officer shall not enter a dwelling, other than—

(*a*) with the consent of the occupier, or

(*b*) in accordance with a warrant issued under *subsection (7)*.

(7) On the application of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that—

(*a*) a tobacco product or any substance or article used in the manufacture, processing or storage of a tobacco product is to be found in any dwelling, or is being or has been subjected to any process or stored in any dwelling,

(*b*) books, records or other documents (including documents stored in non-legible form) referred to in *subsection (4)(a)(ii)* are being stored or kept in any dwelling, or

(*c*) a dwelling is occupied in whole or in part by an undertaking engaged in any trade, business or activity referred to in *subsection (4)(a)(i)*,

issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, within one month of the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under *paragraphs (c), (d), (e), (f), (g), (h), (i)* and *(j)* of *subsection (4)*.

(8) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by this Act or a warrant under *subsection (7)* or impedes the exercise by the officer or member, as the case may be, of such power or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the officer or member pursuant to this section, or in purported compliance with such request or requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect, shall be guilty of an offence.

(9) Where an authorised officer, upon reasonable grounds, believes that a person has committed an offence under this Act he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(10) A person who falsely represents himself or herself to be an authorised officer shall be guilty of an offence.

(11) In this section—

"premises" means any place, ship or other vessel, aircraft, railway wagon or other vehicle, and includes a container used to transport tobacco products or any article or substance used in the manufacture, processing or storage of tobacco products;

"record" includes, in addition to a record in writing—

(*a*) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,

(*b*) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and

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(*c*) a photograph,

and any reference to a copy of a record includes—

(i) in the case of a record to which *paragraph (a)* applies, a transcript of the sounds or signals embodied therein,

(ii) in the case of a record to which *paragraph (b)* applies, a still reproduction of the images embodied therein, and

(iii) in the case of a record to which *paragraphs (a)* and *(b)* apply, such a transcript together with such a still reproduction.

Indemnification of authorised officers.

49.—(1) Where the Office is satisfied that an authorised officer appointed by it, or any other member of the staff of the Office has discharged his or her duties in relation to the enforcement of the provisions of this Act in a *bona fide* manner, the Office shall indemnify the authorised officer, or such member of the staff of the Office against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

(2) Where a health board is satisfied that an authorised officer appointed by it has discharged his or her duties in relation to the enforcement of the provisions of this Act in a *bona fide* manner, the health board shall indemnify the authorised officer against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

Taking of samples by authorised officers.

50.—(1) Where an authorised officer takes a sample of a tobacco product or a sample of any substance or article used in the manufacturing, processing or storage of tobacco products, he or she shall divide the sample into 3 approximately equal parts, and place each part into separate containers which he or she shall forthwith seal and mark in such a manner as to identify it as part of the sample taken by that authorised officer.

(2) Where an authorised officer has complied with *subsection (1)* he or she shall—

(*a*) offer one of the sealed containers to the owner or person for the time being in charge or possession of the tobacco product, substance or article from which the sample concerned was taken,

(*b*) retain one of the said sealed containers, and

(*c*) forward, or cause to be forwarded, one of the sealed containers to a designated laboratory for the purposes of analysis.

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(3) Where a tobacco product, or any substance or article used in the manufacturing, processing or storage of a tobacco product is contained in a container and its division into parts is (for whatever reason) not practicable, an authorised officer, who wishes to take samples of such tobacco product, substance or article for the purposes of analysis, shall take possession of 3 such containers belonging to the same batch, and each such container shall be deemed to be part of a sample for the purposes of *subsection (1)*, and the provisions of *subsections (1)* and *(2)* shall apply thereto accordingly.

Laboratories.

51.—(1) The Minister may, for the purposes of this Act designate, by notice in writing published in *Iris Oifigiúil*—

(*a*) a laboratory as a laboratory at which samples taken under this Act may be analysed (in this Act referred to as a "designated laboratory"), and

(*b*) a person as being a person who, or a class of persons the members of which, may, at a designated laboratory, analyse samples taken under this Act, and each such person or member is in this Act referred to as a "designated analyst".

(2) As soon as practicable after a sample taken by an authorised officer under this Act has been received at a designated laboratory it shall be analysed and the composition, the amount and concentration of its ingredients and any other properties of the sample shall be determined by a designated analyst at that laboratory.

(3) As soon as practicable after compliance with *subsection (2)* a designated analyst engaged in the analysis of samples at the designated laboratory concerned shall forward the results of the analysis carried out on the sample concerned—

(*a*) in the case of a sample forwarded or caused to be forwarded under *section 50* by an authorised officer appointed by the Office, to the Office, or

(*b*) in the case of a sample forwarded or caused to be forwarded under that section by an authorised officer appointed by the health board, to the health board concerned.

Evidence in proceedings for an offence.

52.—(1) In proceedings for an offence consisting of a contravention of this Act, a certificate purporting to be signed by a person employed or engaged at a designated laboratory stating the capacity in which that person is so employed or engaged and stating any one or more of the following, namely—

(*a*) that the person received a sample submitted to the designated laboratory,

(*b*) that, for such period as is specified in the certificate, the person had in his or her custody a sample so submitted, or

(*c*) that the person gave to such other person as is specified in the certificate a sample so submitted,

shall unless the contrary is proved be evidence of the matters stated in the certificate.

(2) In proceedings for an offence consisting of a contravention of this Act, a certificate purporting to be signed by a designated analyst stating any one or more of the following, namely— Pr.3 S.52

(*a*) that he or she carried out any procedure for the purpose of detecting the presence of any substance in the sample so submitted, or

(*b*) that the sample concerned contained such substance or such amount thereof as is specified in the certificate,

shall unless the contrary is proved be evidence of the matters stated in the certificate.

(3) In proceedings for an offence under this Act the court may, if it considers that the interests of justice so require, direct that oral evidence of the matters stated in a certificate under this section be given and the court may, for the purpose of receiving oral evidence, adjourn the proceedings to a later date.

(4) A certificate under this section shall be in such form as may be prescribed by regulations made by the Minister.

(5) In proceedings for an offence under this Act, a tobacco product, or a package containing a tobacco product, that purports to bear the name of the manufacturer or importer of that product, shall unless the contrary is proved be evidence that the tobacco product was manufactured or imported, as the case may be, by the person concerned.

(6) In proceedings for an offence under this Act a tobacco product, or a package containing a tobacco product, that bears a trademark shall unless the contrary is proved be evidence that the product was manufactured by the person who at the time of the alleged commission of the offence owned that trademark.

(7) In this section "trademark" has the same meaning as it has in the Trade Marks Act, 1996.

Forgery of documents.

53.—(1) It shall be an offence for a person to forge or utter knowing it to be forged—

(*a*) the register, an entry in the register or a document purporting to be an extract from the register (in this section referred to as "a forged register"), or

(*b*) a notice, certificate or other document purporting to be issued, granted or given under this Act (in this section referred to as "a forged document").

(2) It shall be an offence for a person to alter with intent to defraud or deceive, or to utter knowing it to be so altered—

(*a*) the register, an entry in the register or an extract from the register (in this section referred to as "an altered register"), or

(*b*) a notice, certificate or other document issued, granted or given under this Act (in this section referred to as "an altered document").

(3) It shall be an offence for a person to have, without lawful authority, in his or her possession a forged register, forged document, altered register or altered document.

(4) It shall be an offence for a person to aid or abet the commission of an offence under this section.

DIRECTIVE 2003/33/CE DU PARLEMENT EUROPÉEN ET DU CONSEIL

du 26 mai 2003

concernant le rapprochement des dispositions législatives, réglementaires et administratives des États membres en matière de publicité et de parrainage en faveur des produits du tabac

(Texte présentant de l'intérêt pour l'EEE)

LE PARLEMENT EUROPÉEN ET LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité instituant la Communauté européenne, et notamment son article 47, paragraphe 2, et ses articles 55 et 95,

vu la proposition de la Commission [1],

vu l'avis du Comité économique et social européen [2],

après consultation du Comité des régions,

statuant conformément à la procédure visée à l'article 251 du traité [3],

considérant ce qui suit:

(1) Il existe des divergences entre les dispositions législatives, réglementaires et administratives des États membres en matière de publicité en faveur des produits du tabac et de parrainage dans ce domaine. Dans certains cas, cette publicité et ce parrainage dépassent les frontières des États membres ou concernent des manifestations organisées au niveau international et constituent donc des activités auxquelles s'applique l'article 49 du traité. Les disparités entre les législations nationales sont de nature à entraîner une augmentation des entraves à la libre circulation entre les États membres des produits ou des services qui servent de support à cette publicité ou à ce parrainage. Dans le cas de la publicité dans la presse, certains obstacles ont déjà été rencontrés. Dans le cas du parrainage, les distorsions des conditions de concurrence sont susceptibles d'augmenter et de telles distorsions ont déjà été observées lors de l'organisation de certaines manifestations sportives et culturelles importantes.

(2) Il y a donc lieu d'éliminer ces entraves et, à cette fin, de rapprocher, dans des cas particuliers, les dispositions en matière de publicité en faveur des produits du tabac et de parrainage dans ce domaine. Il est nécessaire, en particulier, de préciser dans quelle mesure la publicité en faveur du tabac peut être autorisée dans certaines catégories de publications.

(3) En vertu de l'article 95, paragraphe 3, du traité, la Commission, dans ses propositions qui ont pour objet l'établissement et le fonctionnement du marché intérieur en matière de santé, doit prendre pour base un niveau de protection élevé. Dans le cadre de leurs compétences respectives, le Parlement européen et le Conseil cherchent également à atteindre cet objectif. Les législations des États membres à rapprocher visent à protéger la santé publique en réglementant la promotion du tabac, un produit qui entraîne une dépendance et est responsable chaque année de plus d'un demi million de décès dans la Communauté, en évitant que cette promotion n'incite les jeunes à commencer à fumer à un âge précoce et qu'ils ne deviennent dépendants.

(4) La circulation des publications telles que les périodiques, les journaux et les revues, entraîne un risque non négligeable d'entraves à la libre circulation dans le marché intérieur, résultant des dispositions législatives, réglementaires et administratives des États membres qui interdisent ou réglementent la publicité en faveur du tabac dans ces médias. Si l'on veut assurer la libre circulation de tous ces médias dans le marché intérieur, il est nécessaire d'y limiter la publicité en faveur du tabac aux revues et périodiques non destinés au grand public, tels que les publications exclusivement destinées aux professionnels du commerce du tabac et les publications imprimées et éditées dans des pays tiers qui ne sont pas principalement destinées au marché communautaire.

(5) Les dispositions législatives, réglementaires et administratives des États membres relatives à certains types de parrainage, ayant des effets transfrontaliers, en faveur des produits du tabac comportent un risque non négligeable de distorsion des conditions de concurrence pour cette activité dans le marché intérieur. Sans réglementer le parrainage pour autant au niveau purement national, il est nécessaire, pour supprimer ces distorsions, d'interdire ce parrainage uniquement pour les activités ou manifestations ayant des effets transfrontaliers, car cela constituerait sinon un moyen de contourner les restrictions applicables aux formes de publicité directe.

(6) Le recours aux services de la société de l'information est un moyen de faire de la publicité en faveur des produits du tabac qui augmente en même temps que la consommation et l'accès du public à ces services. Ces services, de même que les émissions de radio, qui peuvent également être diffusées par les services de la société de l'information, sont particulièrement attrayants et accessibles pour les jeunes consommateurs. La publicité en faveur du tabac par ces deux médias a, par sa nature même, un caractère transfrontalier et devrait être réglementée au niveau communautaire.

(7) La distribution gratuite de produits du tabac est soumise à des restrictions dans plusieurs États membres, eu égard au risque élevé de créer une dépendance. Des cas de distribution gratuite ont été observés en liaison avec des activités de parrainage de manifestations ayant des effets transfrontaliers et devraient donc être interdits.

[1] JO C 270 E du 25.9.2001, p. 97.
[2] JO C 36 du 8.2.2002, p. 104.
[3] Avis du Parlement européen du 20 novembre 2002 (non encore paru au Journal officiel) et décision du Conseil du 27 mars 2003.

(8) Des normes internationalement applicables à la publicité en faveur des produits du tabac et au parrainage dans ce domaine font l'objet de négociations concernant l'élaboration d'une convention-cadre de l'Organisation mondiale de la santé pour la lutte antitabac. Ces négociations visent à l'établissement de règles internationales contraignantes qui compléteront celles de la présente directive.

(9) La Commission devrait établir un rapport sur la mise en œuvre de la présente directive. Il devrait être prévu dans les programmes communautaires adéquats d'évaluer les effets de la présente directive sur la santé publique.

(10) Les États membres devraient prévoir des mesures adéquates et efficaces pour assurer le contrôle de l'application des mesures prises dans le cadre de la présente directive, dans le respect de leur législation nationale, conformément à la communication de la Commission au Parlement européen et au Conseil sur le rôle des sanctions pour la mise en œuvre de la législation communautaire dans le domaine du marché intérieur et à la résolution du Conseil du 29 juin 1995 sur l'application uniforme et efficace du droit communautaire et sur les sanctions applicables aux violations de ce droit dans le domaine du marché intérieur [1]. Ces moyens devraient comporter des dispositions permettant l'intervention de personnes ou d'organisations ayant un intérêt légitime à la suppression d'activités non conformes à la présente directive.

(11) Les sanctions prévues au titre de la présente directive devraient être sans préjudice de toute autre sanction ou voie de droit prévue par le droit national.

(12) La présente directive réglemente la publicité en faveur des produits du tabac dans les médias autres que la télévision, c'est-à-dire dans la presse et d'autres médias imprimés, dans les émissions radiodiffusées et dans les services de la société de l'information. Elle réglemente aussi le parrainage, par les entreprises du secteur du tabac, d'émissions radiodiffusées et de manifestations ou d'activités qui concernent plusieurs États membres ou se déroulent dans plusieurs États membres ou qui ont d'autres effets transfrontaliers, y compris la distribution gratuite ou à prix réduit de produits du tabac. Les autres formes de publicité, telles que la publicité indirecte, et le parrainage de manifestations ou d'activités n'ayant pas d'effets transfrontaliers n'entrent pas dans le champ d'application de la présente directive. Dans le respect du traité, les États membres restent compétents pour régir ces questions, comme ils l'estiment nécessaire pour assurer la protection de la santé humaine.

(13) La publicité faite à l'égard de médicaments à usage humain est couverte par la directive 2001/83/CE du Parlement européen et du Conseil du 6 novembre 2001 instituant un code communautaire relatif aux médicaments à usage humain [2]. La publicité relative aux produits destinés au sevrage tabagique n'entre pas dans le champ d'application de la présente directive.

(14) La présente directive devrait s'appliquer sans préjudice de la directive 89/552/CEE du Conseil du 3 octobre 1989 visant à la coordination de certaines dispositions législatives, réglementaires et administratives des États membres relatives à l'exercice d'activités de radiodiffusion télévisuelle [3], qui interdit toutes les formes de publicité télévisée en faveur des cigarettes et autres produits du tabac. La directive 89/552/CEE prévoit que les programmes télévisés ne peuvent être parrainés par des entreprises qui ont pour activité principale la fabrication ou la vente de cigarettes ou d'autres produits du tabac ou la fourniture de services dont la publicité est interdite par ladite directive. Le téléachat de produits du tabac est également interdit par la directive 89/552/CEE.

(15) Le caractère transnational de la publicité est reconnu par la directive 84/450/CEE du Conseil du 10 septembre 1984 relative au rapprochement des dispositions législatives, réglementaires et administratives des États membres en matière de publicité trompeuse [4]. La directive 2001/37/CE du Parlement européen et du Conseil du 5 juin 2001 relative au rapprochement des dispositions législatives, réglementaires et administratives des États membres en matière de fabrication, de présentation et de vente des produits du tabac [5] contient des dispositions concernant l'utilisation de descriptions trompeuses sur l'étiquetage des produits du tabac dont l'effet transfrontalier a également été reconnu.

(16) La directive 98/43/CE du Parlement européen et du Conseil du 6 juillet 1998 concernant le rapprochement des dispositions législatives, réglementaires et administratives des États membres en matière de publicité et de parrainage en faveur des produits du tabac [6] a été annulée par la Cour de justice dans son arrêt rendu dans l'affaire C-376/98, République fédérale d'Allemagne contre Parlement européen et Conseil de l'Union européenne [7]. Les références faites à la directive 98/43/CE devraient dès lors s'entendre comme faites à la présente directive.

[1] JO C 188 du 22.7.1995, p. 1.

[2] JO L 311 du 28.11.2001, p. 67.

[3] JO L 298 du 17.10.1989, p. 23. Directive modifiée par la directive 97/36/CE du Parlement européen et du Conseil (JO L 202 du 30.7.1997, p. 60).

[4] JO L 250 du 19.9.1984, p. 17. Directive modifiée par la directive 97/55/CE du Parlement européen et du Conseil (JO L 290 du 23.10.1997, p. 18).

[5] JO L 194 du 18.7.2001, p. 26.

[6] JO L 213 du 30.7.1998, p. 9.

[7] Rec. 2000, p. I-8419.

(17) Conformément au principe de proportionnalité, il est nécessaire et approprié, afin de mettre en œuvre l'objectif fondamental du bon fonctionnement du marché intérieur, de réglementer la publicité en faveur des produits du tabac et le parrainage dans ce domaine. La présente directive n'excède pas ce qui est nécessaire pour atteindre les objectifs poursuivis conformément à l'article 5, troisième alinéa, du traité.

(18) La présente directive respecte les droits fondamentaux et observe les principes qui sont reconnus notamment par la Charte des droits fondamentaux de l'Union européenne. La présente directive vise notamment à assurer le respect du droit fondamental à la liberté d'expression,

ONT ARRÊTÉ LA PRÉSENTE DIRECTIVE:

Article premier

Objet et champ d'application

1. La présente directive a pour objet le rapprochement des dispositions législatives, réglementaires et administratives des États membres en matière de publicité en faveur des produits du tabac ainsi que la promotion de ces produits:

a) dans la presse et d'autres médias imprimés;

b) dans les émissions radiodiffusées;

c) dans les services de la société de l'information, et

d) par le biais du parrainage dans le domaine du tabac, y compris la distribution gratuite de produits du tabac.

2. La présente directive vise à assurer la libre circulation des médias concernés et des services y afférents et à supprimer les obstacles au fonctionnement du marché intérieur.

Article 2

Définitions

Aux fins de la présente directive, on entend par:

a) «produits du tabac», tous les produits destinés à être fumés, prisés, sucés ou mâchés, dès lors qu'ils sont, même partiellement, constitués de tabac;

b) «publicité», toute forme de communication commerciale qui a pour but ou effet direct ou indirect de promouvoir un produit du tabac;

c) «parrainage», toute forme de contribution publique ou privée à un événement, à une activité ou à un individu, ayant pour but ou effet direct ou indirect de promouvoir un produit du tabac;

d) «services de la société de l'information», les services au sens de l'article 1er, paragraphe 2, de la directive 98/34/CE du Parlement européen et du Conseil du 22 juin 1998 prévoyant une procédure d'information dans le domaine des normes et réglementations techniques et des règles relatives aux services de la société de l'information (1).

Article 3

Publicité dans les médias imprimés et dans les services de la société de l'information

1. La publicité dans la presse et d'autres médias imprimés est limitée aux publications exclusivement destinées aux professionnels du commerce du tabac et aux publications qui sont imprimées et éditées dans des pays tiers, lorsque ces publications ne sont pas principalement destinées au marché communautaire.

Toute autre publicité dans la presse et d'autres médias imprimés est interdite.

2. La publicité qui n'est pas autorisée dans la presse et d'autres médias imprimés n'est pas autorisée dans les services de la société de l'information.

Article 4

Publicité radiodiffusée et parrainage

1. Toutes les formes de publicité radiodiffusée en faveur des produits du tabac sont interdites.

2. Les émissions radiodiffusées ne font pas l'objet d'un parrainage par des entreprises dont l'activité principale consiste à fabriquer ou à vendre des produits du tabac.

Article 5

Parrainage de manifestations

1. Le parrainage de manifestations ou d'activités concernant plusieurs États membres ou se déroulant dans plusieurs États membres ou ayant d'autres effets transfrontaliers est interdit.

2. Toute distribution gratuite de produits du tabac dans le cadre du parrainage des manifestations visées au paragraphe 1, ayant pour but ou effet direct ou indirect de promouvoir ces produits, est interdite.

Article 6

Rapport

Au plus tard le 20 juin 2008, la Commission présente au Parlement européen, au Conseil et au Comité économique et social européen un rapport sur la mise en œuvre de la présente directive. La Commission accompagne ce rapport des propositions de modification de la présente directive qu'elle estime nécessaires.

(1) JO L 204 du 21.7.1998, p. 37. Directive modifiée par la directive 98/48/CE (JO L 217 du 5.8.1998, p. 18).

Article 7

Sanctions et application

Les États membres déterminent le régime des sanctions applicables aux violations des dispositions nationales prises en application de la présente directive et prennent toutes les mesures nécessaires pour assurer la mise en œuvre de celles-ci. Les sanctions ainsi prévues doivent être effectives, proportionnées et dissuasives. Les États membres notifient ce régime à la Commission au plus tard à la date visée à l'article 10 et lui notifient dans les meilleurs délais toute modification ultérieure le concernant.

Ce régime comporte des dispositions garantissant aux personnes ou organisations qui, selon la législation nationale, peuvent justifier d'un intérêt légitime à la suppression d'une publicité, d'un parrainage ou d'une autre activité incompatible avec la présente directive la possibilité d'intenter une action en justice contre cette publicité ou ce parrainage ou de saisir l'organe administratif compétent pour qu'il se prononce sur les plaintes ou engage les poursuites judiciaires appropriées.

Article 8

Libre circulation des produits et des services

Les États membres ne peuvent interdire ou restreindre la libre circulation des produits ou des services qui sont conformes à la présente directive.

Article 9

Références à la directive 98/43/CE

Les références faites à la directive 98/43/CE annulée s'entendent comme faites à la présente directive.

Article 10

Mise en œuvre

1. Les États membres mettent en vigueur les dispositions législatives, réglementaires et administratives nécessaires pour se conformer à la présente directive au plus tard le 31 juillet 2005. Ils en informent immédiatement la Commission.

Lorsque les États membres adoptent ces dispositions, celles-ci contiennent une référence à la présente directive ou sont accompagnées d'une telle référence lors de leur publication officielle. Les modalités de cette référence sont arrêtées par les États membres.

2. Les États membres communiquent à la Commission le texte des dispositions essentielles de droit interne qu'ils adoptent dans le domaine régi par la présente directive.

Article 11

Entrée en vigueur

La présente directive entre en vigueur le jour de sa publication au *Journal officiel de l'Union européenne*.

Article 12

Destinataires

Les États membres sont destinataires de la présente directive.

Fait à Bruxelles, le 26 mai 2003.

Par le Parlement européen	*Par le Conseil*
Le président	*Le président*
P. COX	G. DRYS

Number 6 *of* 2004

PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2004

ARRANGEMENT OF SECTIONS

Section

1. Definition.
2. Amendment of section 2 of Principal Act.
3. Amendment of section 5 of Principal Act.
4. Repeals, saver and revocation.
5. Prohibition of advertising of tobacco products.
6. Advertisements directed at persons engaged in the sale, etc., of tobacco products.
7. Prohibition of sponsorship.
8. Register of retailers of tobacco products.
9. Prohibition of certain marketing practices.
10. Amendment of section 39 of Principal Act.
11. Requirement to provide information on and test tobacco products.
12. Publication of certain information, etc.
13. Prohibition on certain assertions in relation to tobacco products.
14. Offences relating to sale by retail of tobacco products.
15. Display of signs.
16. Amendment of section 47 of Principal Act.
17. Amendment of section 48 of Principal Act.
18. Taking of samples by authorised officers.
19. Repeal.
20. Short title, commencement and collective citation.

SCHEDULE

DIRECTIVE 2003/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 MAY 2003

ACTS REFERRED TO

Criminal Justice Act 1960	1960, No. 27
Education Act 1998	1998, No. 51
Finance Act 1997	1997, No. 22
Finance (Excise Duty on Tobacco Products) Act 1977	1977, No. 32
Health Acts 1947 to 2001	
Health (Nursing Homes) Act 1990	1990, No. 23
Irish Medicines Board Act 1995	1995, No. 29
Mental Health Act 2001	2001, No. 25
Mental Treatment Acts 1945 to 1966	
Prisons Act 1970	1970, No. 11
Prisons Act 1972	1972, No. 7
Public Health (Tobacco) Act 2002	2002, No. 6
Registration of Maternity Homes Act 1934	1934, No. 14
Safety, Health and Welfare at Work Act 1989	1989, No. 7
Tourist Traffic Act 1939	1939, No. 24
Tourist Traffic Act 1957	1957, No. 27

Number 6 *of* 2004

PUBLIC HEALTH (TOBACCO) (AMENDMENT) ACT 2004

AN ACT TO GIVE EFFECT IN PART TO DIRECTIVE NO. 2001/37/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 5 JUNE 2001[1] ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES CONCERNING THE MANUFACTURE, PRESENTATION AND SALE OF TOBACCO PRODUCTS; TO GIVE EFFECT TO DIRECTIVE NO. 2003/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 MAY 2003[2] ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES RELATING TO THE ADVERTISING AND SPONSORSHIP OF TOBACCO PRODUCTS; AND FOR THOSE AND OTHER PURPOSES, AND HAVING REGARD TO COUNCIL RECOMMENDATION OF 2 DECEMBER 2002[3] ON THE PREVENTION OF SMOKING AND ON INITIATIVES TO IMPROVE TOBACCO CONTROL, AND THE WORLD HEALTH ORGANISATION FRAMEWORK CONVENTION ON TOBACCO CONTROL DONE AT GENEVA ON THE 21st DAY OF MAY 2003, TO AMEND THE PUBLIC HEALTH (TOBACCO) ACT 2002.

[11*th March* 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definition.

1.—In this Act "Principal Act" means the Public Health (Tobacco) Act 2002.

Amendment of section 2 of Principal Act.

2.—Section 2 of the Principal Act is amended, in subsection (1), by—

(*a*) the deletion of the definition of "advertisement",

(*b*) the insertion of the following definitions:

" 'advertising' has the same meaning as it has in the Directive of 2003, and cognate words shall be construed accordingly;

[1] OJ No. L 194, 18.7.2001, p.26
[2] OJ No. L 152, 20.6.2003, p.16
[3] OJ No. L 22, 25.1.2003, p.31

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'Directive of 2001' means Directive No. 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products;

'Directive of 2003' means Directive No. 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, the text of which is set out in the *Schedule* to the *Public Health (Tobacco) (Amendment) Act 2004*;",

(*c*) the substitution of the following definition for the definition of "public service vehicle":

"'public service vehicle' means a mechanically propelled vehicle used for the carriage of persons for reward and having seating accommodation for more than 8 persons exclusive of the driver;",

and

(*d*) the substitution of the following definition for the definition of "tobacco product":

"'tobacco product' means—

(*a*) any product consisting, in whole or in part, of tobacco, that is intended to be smoked,

(*b*) a tobacco product within the meaning of the Finance (Excise Duty on Tobacco Products) Act 1977 (inserted by section 86(1) of the Finance Act 1997), or

(*c*) any cigarette paper, tube or filter manufactured for use in the smoking of tobacco,

other than a medicinal product within the meaning of the Irish Medicines Board Act 1995.".

Amendment of section 5 of Principal Act.

3.—Section 5 of the Principal Act is amended by—

(*a*) the deletion in subsection (2) of ", 47",

(*b*) the insertion of the following subsection:

"(2A) A person guilty of an offence under section 47 shall be liable on summary conviction to a fine not exceeding €3,000.",

(*c*) the insertion, in subsection (3), of "33A," after "section 33,", and

(*d*) the substitution of "€3,000" for "€1,900" in each place that it occurs.

Repeals, saver and revocation.

4.—The Principal Act is amended by the substitution of the following section for section 8:

"8.—(1) The following enactments are repealed, namely—

(*a*) the Act of 1978, and

(*b*) the Act of 1988.

(2) Notwithstanding subsection (1), regulations made under the Act of 1978 or the Act of 1988 that are in force immediately before the commencement of that subsection shall, subject to—

(*a*) subsection (3), and

(*b*) subsection (5) of section 47 (inserted by *section 16* of the *Public Health (Tobacco) (Amendment) Act 2004*),

continue in force after such commencement.

(3) The Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991 (S.I. No. 326 of 1991) are revoked.".

Prohibition of advertising of tobacco products.

5.—The Principal Act is amended by the substitution of the following sections for section 33:

"33.—Subject to section 35, a person who advertises, or causes the advertisement of, a tobacco product in contravention of the Directive of 2003 shall be guilty of an offence.

33A.—(1) The advertisement of tobacco products in premises in which the business of selling tobacco products by retail is carried on in whole or in part is prohibited.

(2) A person who contravenes subsection (1) shall be guilty of an offence.

(3) Where in relation to a premises to which subsection (1) applies there is a contravention of that subsection, the occupier, manager and any other person for the time being in charge of the premises shall each be guilty of an offence.

(4) In this section, 'advertisement' includes, in relation to a tobacco product, every form of recommendation of the product to the public and, in particular—

(*a*) (i) a statement of the name of a manufacturer or importer of a tobacco product, or the name of any brand of tobacco product, or

(ii) a statement of any trade description or designation, or a display or other publication of a trademark, emblem, marketing image or logo, by reference to which the product is marketed or sold,

in circumstances where such statement, display or publication may reasonably be regarded as a recommendation of the product to the public, and

S.5

(*b*) a statement of the properties of the product on a label, container, wrapper or package used for the product or in a leaflet, circular, pamphlet or brochure issued to the public or given to a purchaser of the product,

and cognate words shall be construed accordingly.".

Advertisements directed at persons engaged in the sale, etc., of tobacco products.

6.—The Principal Act is amended by the substitution of the following section for section 35:

"35.—Section 33 shall not apply to the advertising of a tobacco product in a publication that—

(*a*) is—

(i) printed and published, and

(ii) primarily intended for sale or distribution,

in a state other than a Member State of the European Communities, or

(*b*) is directed solely at persons who carry on, in whole or in part, the business of selling or distributing tobacco products.".

Prohibition of sponsorship.

7.—The Principal Act is amended by the substitution of the following section for section 36:

"36.—(1) A person who engages in sponsorship in contravention of the Directive of 2003 shall be guilty of an offence.

(2) It shall be an offence for a person to give financial or other assistance, or cause financial or other assistance to be given, to or for the benefit of a person, or for or in relation to an event or activity, in consideration of the—

(*a*) use, display or advertising by the person, or at the event or activity concerned,

(*b*) association with the person, event or activity, or

(*c*) promotion,

of a tobacco product, the name of a tobacco manufacturer or importer, the name of a brand of tobacco product or a trademark, emblem, marketing image or logo used in the marketing of a tobacco product.

(3) It shall be an offence for a person to receive financial or other assistance to which subsection (2) applies.

(4) In this section 'sponsorship' has the same meaning as it has in the Directive of 2003.".

Register of retailers of tobacco products.

8.—The Principal Act is amended by the substitution of the following section for section 37:

"37.—(1) The Office shall, on the commencement of this section, cause to be established and maintained a register of all

persons who carry on, in whole or in part, the business of selling tobacco products by retail (hereafter in this Act referred to as 'the register'). S.8

(2) The Office may, for the purpose of defraying any expense incurred in establishing or maintaining the register, charge each person registered under this section a fee of such amount as may be determined by the Minister (in this section referred to as the 'appropriate fee').

(3) Where a person proposes to carry on, in whole or in part, the business of selling tobacco products by retail he or she shall, in accordance with this section, apply to the Office to be registered in the register.

(4) A person who immediately before the commencement of this section was carrying on, in whole or in part, the business of selling tobacco products by retail shall, if he or she wishes to continue carrying on that business, apply, not later than 3 months after such commencement, to the Office to be registered in the register.

(5) An application under this section shall—

(*a*) be in writing,

(*b*) specify the name of the applicant and the address at which he or she ordinarily resides,

(*c*) specify the address of each premises at which the applicant carries on, in whole or in part, the business of selling tobacco products by retail,

(*d*) contain such other information as may be prescribed by regulations made by the Minister, and

(*e*) be accompanied by the appropriate fee.

(6) As soon as practicable after an application under this section, in respect of which there is compliance with subsection (5), is received by the Office, the Office shall, subject to subsection (9), enter in the register—

(*a*) the applicant's name and the address at which he or she ordinarily resides,

(*b*) the address of each premises at which he or she carries on, in whole or in part, the business referred to in subsection (1),

(*c*) a number from which it will be possible to identify the applicant (in this Act referred to as the 'registration number'),

(*d*) the names of the persons who supply the applicant with tobacco products in connection with his or her business, and

(*e*) such other particulars as the Office considers appropriate,

S.8

and a person shall, upon the Office so entering the matters specified in this subsection in relation to him or her, be registered for the purposes of this section.

(7) If a person, who is registered under this section, is convicted of an offence under this Act, and the offence relates to, or was committed on, premises in which the person carries on, in whole or in part, the business of selling tobacco products by retail (being premises in respect of which the person is for the time being so registered) the Office shall, in circumstances where the person is so registered in respect of premises other than the first-mentioned premises, remove the address of the first-mentioned premises from the register, and such person shall not, before the expiration of—

(*a*) the period of 3 months (in the case of a person convicted summarily of an offence), or

(*b*) the period of one year (in the case of a person convicted of an offence on indictment),

from the address being so removed, be eligible to be registered under this section in respect of the premises concerned, and the Office shall not, until such expiration, perform, in relation to any application by the person under this section, any function under subsection (6).

(8) If a person, who is registered under this section, is convicted of an offence under this Act, and the offence relates to, or was committed on, premises in which the person carries on, in whole or in part, the business of selling tobacco products by retail (being the only premises in respect of which the person is for the time being so registered) the Office shall remove from the register that person's name, the address of those premises, the registration number in respect of him or her and any other particulars entered in the register relating to him or her, and such person shall not, before the expiration of—

(*a*) the period of 3 months (in the case of a person convicted summarily of an offence), or

(*b*) the period of one year (in the case of a person convicted of an offence on indictment),

from his or her being so removed, be eligible to be registered under this section in respect of those premises, and the Office shall not, until such expiration, perform, in relation to any application by the person under this section, any function under subsection (6).

(9) Where a person, who has made an application under subsection (3) in respect of which the Office has not yet performed a function under subsection (6), is convicted of an offence under this Act, that person shall not be eligible to be registered under this section before the expiration of—

(*a*) the period of 3 months (in the case of a person convicted summarily of an offence), or

(*b*) the period of one year (in the case of a person convicted of an offence on indictment),

from him or her being so convicted, and the Office shall not during that period perform any function under subsection (6) in relation to his or her application. S.8

(10) Where a person to whom subsection (4) applies is convicted of an offence under this Act during the 3 month period referred to therein, he or she shall not be eligible to be registered under this section before the expiration of—

(*a*) the period of 6 months (in the case of a person convicted summarily of an offence), or

(*b*) the period of 15 months (in the case of a person convicted of an offence on indictment),

from the commencement of this section and the Office shall not during the said period of 6 months or the said period of 15 months, as the case may be, perform any function under subsection (6) in relation to an application under this section by him or her after his or her being so convicted.

(11) A person registered under this section shall, if a particular entered in the register in accordance with subsection (6) in relation to him or her ceases to be correct, so inform the Office as soon as may be.

(12) The Office shall upon becoming aware that any particular entered in the register is incorrect or has ceased to be correct make such alterations to the register as it considers necessary.

(13) A person who, in purported compliance with subsection (5), knowingly or recklessly provides information or a particular to the Office that is false or misleading in a material respect, or who believes any such information or particular provided by him or her, in purported compliance with that subsection, not to be true, shall be guilty of an offence.

(14) Subject to subsection (15), it shall be an offence for a person to sell a tobacco product, or cause a tobacco product to be sold, by retail.

(15) (*a*) It shall be lawful for a person to sell a tobacco product, or cause a tobacco product to be sold by retail, in accordance with this Act, from premises in respect of which he or she is registered under this section.

(*b*) It shall be lawful for a person who immediately before the commencement of this section carried on, in whole or in part, the business of selling tobacco products by retail to sell a tobacco product, or cause a tobacco product to be sold, by retail, in accordance with this Act, during the period of 3 months after such commencement, from premises (being premises in respect of which he or she is not registered under this section) in which, immediately before such commencement, he or she carried on such business.

(*c*) It shall be lawful for a person to whom paragraph (*b*) applies and who has made an application under subsection (4) in respect of premises to which that subsection applies to sell a tobacco product, or cause a tobacco product to be sold, by retail, in accordance

S.8

with this Act, during the period of 12 months after the expiration of the period of 3 months referred to in that subsection, from such premises (being premises in respect of which he or she is not registered under this section).".

Prohibition of certain marketing practices.

9.—The Principal Act is amended by the substitution of the following section for section 38:

"38.—(1) It shall be an offence for a person to sell cigarettes by retail other than in a packet containing not less than 20 cigarettes.

(2) It shall be an offence for a person to manufacture, import, supply, sell or invite an offer to purchase an oral smokeless tobacco product.

(3) It shall be an offence for a person to sell confectioneries normally intended for sale to children, that have been manufactured in such a way as to resemble in appearance a type of tobacco product.

(4) It shall be an offence for a person to—

(*a*) import,

(*b*) sell (by retail or otherwise), or

(*c*) otherwise supply to, or invite an offer to purchase by, any person,

a tobacco product, the packaging of which does not bear a warning in such form and of such a type as may be prescribed by regulations made by the Minister, that is intended to inform the public that the consumption of the product is injurious to health, and a statement containing such other information as may be so prescribed in such form as may be so prescribed.

(5) It shall be an offence for a person to—

(*a*) import,

(*b*) sell (by retail or otherwise), or

(*c*) otherwise supply to, or invite an offer to purchase by, any person,

a tobacco product, the packaging of which does not bear a number in such form as may be prescribed by regulations made by the Minister, that enables the lot or batch from which the product orginated and the date and place of its manufacture to be ascertained.

(6) Regulations under subsection (4) or (5) may be made for the purpose of giving effect to Article 5 of the Directive of 2001.

(7) It shall be an offence for a person to supply free of charge to a member of the public any tobacco product for the purpose of promoting the consumption of that product.

(8) It shall be an offence for a person to supply or sell to a member of the public any voucher, coupon or other document

or thing (intended to be used as a substitute for money) for the purpose of its being— S.9

(*a*) used as payment or payment in part, or

(*b*) otherwise exchanged,

for a tobacco product.

(9) It shall be an offence for a person to sell a tobacco product by retail, or supply a tobacco product to, or invite an offer to purchase by, a member of the public of a tobacco product where part of the consideration to be given to the purchaser is a gift, token, trading stamp, coupon or other document or thing that may be exchanged for or used as payment or payment in part for certain goods.

(10) The Minister may, for the purpose of ensuring that the price at which a tobacco product is sold does not constitute a sales promotion device, by regulations, make such provision in relation to the price at which tobacco products or tobacco products of such a class as may be specified in the regulations may be sold as he or she considers appropriate.

(11) A person who sells or invites an offer to purchase a tobacco product in contravention of regulations under subsection (10) shall be guilty of an offence.".

Amendment of section 39 of Principal Act.

10.—Section 39 of the Principal Act is amended by the insertion of the following subsection:

"(1A) Regulations under this section may be made for the purpose of giving effect to Article 3 of the Directive of 2001.".

Requirement to provide information on and test tobacco products.

11.—The Principal Act is amended by the substitution of the following section for section 40:

"40.—(1) A manufacturer or importer of tobacco products shall provide the Office with such information (within such period as it may, from time to time by notice in writing, require) relating to—

(*a*) the tobacco products concerned,

(*b*) tobacco products of such a class as the Office may specify, or

(*c*) tobacco products that are sold under such brand name as may be so specified,

including information relating to—

(i) the composition or properties of tobacco products, and

(ii) their sale or marketing.

(2) The Office may, by notice in writing, require the manufacturer or importer of a tobacco product to carry out such tests as are specified in the notice on such tobacco products manufactured by him or her as are so specified.

S.11

(3) The manufacturer or importer of a tobacco product shall, when carrying out a test pursuant to a requirement under subsection (2), permit such person as may be specified in a notice under that subsection to attend at the place or places where such test is carried out and observe its being carried out.

(4) A manufacturer or importer who carries out a test pursuant to a notice under subsection (2) shall, not later than 14 days from his or her obtaining the results of the test, furnish the Office with a statement of those results which shall contain such information and be in such form as the Office may specify.

(5) A person who contravenes this section or a requirement under this section shall be guilty of an offence.".

Publication of certain information, etc.

12.—The Principal Act is amended by the substitution of the following section for section 41:

"41.—(1) The Office may publish such information and such results of tests received under section 40 in such manner as it considers appropriate.

(2) Where the Office proposes to publish information or results of tests under subsection (1) it shall, not later than 21 days before so doing, notify the manufacturer or importer concerned, in writing, that it so proposes.

(3) The High Court may, if of the opinion that the publication of information or the results of tests in accordance with subsection (1) would result in the disclosure of a secret manufacturing process, direct the Office not to publish such information or results, upon application being made to the High Court in that behalf by the manufacturer or importer concerned.

(4) An application referred to in subsection (3) may be brought not later than 21 days from the receipt of the notification under subsection (2).

(5) The Office shall comply with a direction under subsection (3).

(6) Proceedings under subsection (3) shall be held *in camera*.".

Prohibition on certain assertions in relation to tobacco products.

13.—The Principal Act is amended by the substitution of the following section for section 42:

"42.—(1) Where the packaging of a tobacco product or any printed material attached to or accompanying a tobacco product or such packaging bears an assertion that—

(*a*) smoking does not cause life threatening diseases,

(*b*) the smoking or consumption of one brand or class of tobacco product is less harmful than the smoking or consumption of others,

(*c*) the smoking of tobacco products is not addictive,

(*d*) filters attached to, or additives to or other ingredients of, a tobacco product render it less harmful than

tobacco products that do not have filters attached, or do not contain such additives or ingredients, S.13

the manufacturer, importer and distributor of the tobacco product concerned shall each be guilty of an offence.

(2) It shall be an offence for a person to sell by retail a tobacco product where the package containing the product bears an assertion referred to in subsection (1).".

Offences relating to sale by retail of tobacco products.

14.—The Principal Act is amended by the substitution of the following section for section 43:

"43.—(1) Subject to subsection (2), it shall be an offence for a person to sell a tobacco product by retail, or cause a tobacco product to be sold by retail, by means of self service.

(2) It shall be lawful for tobacco products to be sold by retail, in accordance with regulations made by the Minister, by means of a vending machine on licensed premises or the premises of a registered club by such persons, or by persons belonging to such classes of persons, as are specified in the regulations (being persons who are registered under section 37 in respect of the licensed premises concerned or the premises of the registered club concerned).

(3) A person registered under section 37 (other than a person to whom regulations under subsection (2) apply) shall ensure that tobacco products sold by him or her are kept in a closed container or dispenser that is not visible or accessible to any person other than the first-mentioned person, or a person employed by him or her in connection with the business of selling goods by retail while so employed.

(4) A person registered under section 37 shall ensure that—

(*a*) the registration number in respect of him or her is affixed to the container, dispenser or vending machine, as the case may be,

(*b*) subject to paragraph (*c*) and the European Communities (Requirements to Indicate Product Prices) Regulations 2002 (S.I. No. 639 of 2002)—

(i) no notice, sign or display shall be displayed, and

(ii) no leaflet, circular, pamphlet or brochure shall be issued to the public or given to a purchaser of a product,

at any place, indicating that tobacco products may be purchased at the premises concerned,

(*c*) a sign is displayed at the premises concerned—

(i) in such a manner and form as may be prescribed by regulations made by the Minister,

(ii) informing the public that tobacco products may be sold at those premises to persons who have attained the age of 18 years, and

S.14

(iii) providing such other information as may be so prescribed.

(5) (*a*) A person registered under section 37 may provide such information relating to a tobacco product sold by him or her to a member of the public intending to purchase a tobacco product as may be prescribed by regulations made by the Minister.

(*b*) Regulations under paragraph (*a*) may provide that the person registered under section 37 may—

(i) notwithstanding subsection (3), show the member of the public concerned one packet only of each tobacco product sold by him or her, or a reproduction thereof, or

(ii) show the member of the public concerned a pictorial list consisting of visual images of packets of the tobacco products sold by him or her, provided that—

(I) each such image is not greater in size than the size of the packet concerned,

(II) the list does not contain more than one image of the same product, and

(III) the list or each such image contains a warning in such form and of such a type as may be prescribed by those regulations.

(6) A person who contravenes subsection (3) or (4), or regulations under subsection (5), shall be guilty of an offence.

(7) For the purposes of subsection (1), a tobacco product shall be deemed to have been sold by means of self service where the purchaser was permitted to supply himself or herself, either upon or before payment, with the tobacco product concerned whether by means of the depositing of money or a token (intended to be used as a substitute for money) in a machine containing the tobacco product or otherwise.".

Display of signs.

15.—The Principal Act is amended by the substitution of the following section for section 46:

"46.—(1) There shall be displayed at all times at all premises (in part of which the smoking of tobacco products is prohibited) to which members of the public have access, either as of right or with the permission of the occupier of those premises, a sign indicating clearly those parts of the premises in which smoking is permitted and those parts of the premises in which smoking is prohibited, and each such sign shall display the name of the occupier or other person in charge of the premises concerned and the name of the person to whom a complaint may be made by a member of the public for the time being present on the premises who observes another person smoking a tobacco product in a part of the premises in which smoking is prohibited.

(2) There shall be displayed at all times at all premises (in which the smoking of tobacco products is prohibited) to which members of the public have access, either as of right or with the

permission of the occupier of those premises, a sign indicating clearly that smoking is prohibited on those premises, and each such sign shall display the name of the occupier or other person in charge of the premises concerned and the name of the person to whom a complaint may be made by a member of the public for the time being present on the premises who observes another person smoking a tobacco product on those premises. S.15

(3) There shall be displayed at all times in a public service vehicle a sign stating that smoking is not permitted in that vehicle.

(4) Where there is a contravention of subsection (1) or (2), the occupier and person in charge of the premises concerned shall each be guilty of an offence.

(5) Where there is a contravention of subsection (3), the owner and person in charge of the public service vehicle concerned shall each be guilty of an offence.

(6) In this section 'owner', when used in relation to a mechanically propelled vehicle that is the subject of a hire-purchase agreement, means the person entitled to be in possession of the vehicle under the agreement.".

Amendment of section 47 of Principal Act.

16.—The Principal Act is amended by the substitution of the following section for section 47:

"47.—(1) Subject to subsection (7), the smoking of a tobacco product in a specified place is prohibited.

(2) A person who contravenes subsection (1) shall be guilty of an offence.

(3) Where in relation to a specified place there is a contravention of subsection (1), the occupier, manager and any other person for the time being in charge of the specified place concerned shall each be guilty of an offence.

(4) In proceedings for an offence under this section, it shall be a defence for a person against whom such proceedings are brought to show that he or she made all reasonable efforts to ensure compliance with this section.

(5) The Tobacco (Health Promotion and Protection) Regulations 1995 (S.I. No. 359 of 1995) are revoked.

(6) This section has been enacted for the purposes of reducing the risk to and protecting the health of persons.

(7) This section shall not apply to—

(*a*) a dwelling,

(*b*) a prison,

(*c*) subject to paragraph (*d*), a place or premises, or a part of a place or premises, that is wholly uncovered by any roof, whether fixed or movable,

(*d*) an outdoor part of a place or premises covered by a fixed or movable roof, provided that not more than

S.16

50 per cent of the perimeter of that part is surrounded by one or more walls or similar structures (inclusive of windows, doors, gates or other means of access to or egress from that part),

(*e*) a bedroom in—

(i) a premises registered under Part III of the Tourist Traffic Act 1939 in a register established and maintained under that Part,

(ii) a premises for the time being specified in a list published, or caused to be published, under section 9 of the Tourist Traffic Act 1957, or

(iii) any other premises in which a person carries on business, being a business that consists of or includes the provision, in those premises, of sleeping accommodation to members of the public,

(*f*) a room that, in furtherance of charitable objects, is used solely for the provision of living accommodation,

(*g*) in premises owned or occupied by a person whose main objects are the provision of education, a room that, in furtherance of those objects (other than objects relating to the provision of primary or secondary education), is used solely for the provision of living accommodation,

(*h*) a nursing home,

(*i*) a hospice,

(*j*) a psychiatric hospital, or

(*k*) the Central Mental Hospital.

(8) In this section—

'college' means a university, institute of technology or other establishment at which third level eduction is provided;

'health premises' means any hospital, sanatorium, home, laboratory, clinic, health care centre or similar premises required for the provision of services under the Health Acts 1947 to 2001 provided and maintained by a health board under section 38 of the Act of 1970;

'hospice' means an institution—

(*a*) for the maintenance of, and

(*b*) in which palliative care is provided to,

persons (a majority of whom are over 18 years of age) who suffer from illnesses or diseases which are active, progressive and advanced in nature and which are no longer curable by means of the administration of existing or available medical treatments, but does not include—

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(i) an institution in which a majority of the persons being maintained are being treated for acute illnesses, or

(ii) a maternity home within the meaning of the Registration of Maternity Homes Act 1934;

'nursing home' has the same meaning as it has in the Health (Nursing Homes) Act 1990, except that it includes—

(*a*) an institution to which paragraph (*a*), (*e*) or (*g*) of section 2(1) of that Act applies, and

(*b*) a premises in which a majority of the persons being maintained are members of a religious order, or priests or clergy of any religion;

'place of work' has the same meaning as it has in the Safety, Health and Welfare at Work Act 1989;

'prison' means a place of custody administered by the Minister for Justice, Equality and Law Reform, and includes—

(*a*) Saint Patrick's Institution,

(*b*) a place provided under section 2 of the Prisons Act 1970,

(*c*) a place specified under section 3 of the Prisons Act 1972, and

(*d*) any part of a Garda Síochána station used for the detention of persons;

'psychiatric hospital' means—

(*a*) a mental institution within the meaning of the Mental Treatment Acts 1945 to 1966, or

(*b*) an approved centre under the Mental Health Act 2001;

'Saint Patrick's Institution' has the same meaning as it has in the Criminal Justice Act 1960;

'school' has the same meaning as it has in the Education Act 1998;

'specified place' means—

(*a*) a place of work,

(*b*) an aircraft, train, ship or other vessel, public service vehicle, or a vehicle used for the carriage of members of the public for reward other than a public service vehicle, insofar as it is a place of work,

(*c*) a health premises, insofar as it is a place of work,

(*d*) a hospital that is not a health premises, insofar as it is a place of work,

(*e*) a school or college, insofar as it is a place of work,

S.16

(*f*) a building to which the public has access, either as of right or with the permission of the owner or occupier of the building, and which belongs to, or is in the occupation of—

(i) the State,

(ii) a Minister of the Government,

(iii) the Commissioners of Public Works in Ireland, or

(iv) a body established by or under an Act of the Oireachtas,

insofar as it is a place of work,

(*g*) a cinema, theatre, concert hall or other place normally used for indoor public entertainment, insofar as it is a place of work,

(*h*) a licensed premises, insofar as it is a place of work, or

(*i*) a registered club, insofar as it is a place of work.".

Amendment of section 48 of Principal Act.

17.—Section 48 of the Principal Act is amended by the substitution of the following subsections for subsections (4), (5), (6), (7), (8) and (9):

"(4) For the purposes of this Act, an authorised officer may—

(*a*) subject to subsection (6), enter (if necessary by the use of reasonable force), at all reasonable times, any premises at which he or she has reasonable grounds for believing that—

(i) any trade, business or activity connected with the manufacture, processing, disposal, export, import, distribution, sale, storage, packaging or labelling of a tobacco product is or has been carried on, or

(ii) books, records or other documents (including documents stored in non-legible form) relating to such trade, business or activity are kept,

(*b*) at all reasonable times enter (if necessary by the use of reasonable force) any specified place,

(*c*) at such premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he or she finds in the course of his or her inspection,

(*d*) remove any such books, records or documents from such premises and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,

(*e*) carry out, or have carried out, such examinations, tests, inspections and checks of—

(i) the premises,

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(ii) any tobacco product or any article or substance used in the manufacture, processing or storage of tobacco products, at the premises, or

(iii) any equipment, machinery or plant at the premises,

as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,

(*f*) require any person at the premises or the owner or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her such books, documents or other records (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under this Act,

(*g*) take samples of any tobacco product or any article or substance used in the manufacture, processing or storage of tobacco products found at the premises for the purposes of analysis and examination,

(*h*) direct that such tobacco products found at the premises as he or she, upon reasonable grounds, believes contravene a provision of this Act not be sold or distributed or moved from the premises, without his or her consent,

(*i*) secure for later inspection any premises or part of any premises in which a tobacco product, substance or article is found or ordinarily kept, or records, books or documents are found or ordinarily kept, for such period as may reasonably be necessary for the purposes of his or her functions under this Act, or

(*j*) take possession of and remove from the premises for examination and analysis any tobacco product or any substance or article used in the manufacture, processing or storage of tobacco products found there, and detain them for such period as he or she considers reasonably necessary for the purposes of his or her functions under this Act.

(5) When performing a function under this Act, an authorised officer may, subject to any warrant under subsection (7), be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.

(6) An authorised officer shall not enter a dwelling, other than—

(*a*) with the consent of the occupier, or

(*b*) in accordance with a warrant issued under subsection (7).

(7) Upon the application of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that—

S.17

(*a*) a tobacco product or any substance or article used in the manufacture, processing or storage of a tobacco product is to be found in any dwelling, or is being or has been subjected to any process or stored in any dwelling,

(*b*) books, records or other documents (including documents stored in non-legible form) referred to in subsection (4)(*a*)(ii) are being stored or kept in any dwelling, or

(*c*) a dwelling is occupied in whole or in part by an undertaking engaged in any trade, business or activity referred to in subsection (4)(*a*)(i),

issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, within one month of the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under paragraphs (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*) and (*j*) of subsection (4).

(8) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by this Act or a warrant under subsection (7) or impedes the exercise by the officer or member, as the case may be, of such power or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the officer or member pursuant to this section, or in purported compliance with such request or requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect, shall be guilty of an offence.

(9) Where an authorised officer, upon reasonable grounds, believes that a person has committed an offence under this Act, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(10) A statement or admission made by a person pursuant to a requirement under subsection (4)(*f*) shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under subsection (8)).".

Taking of samples by authorised officers.

18.—The Principal Act is amended by the substitution of the following section for section 50:

"50.—(1) Where an authorised officer takes a sample of a tobacco product or a sample of any substance or article used in the manufacturing, processing or storage of tobacco products, he or she shall divide the sample into 3 approximately equal parts, and place each part into separate containers which he or she shall forthwith seal and mark in such a manner as to identify it as part of the sample taken by that authorised officer.

(2) Where an authorised officer has complied with subsection (1) he or she shall—

(*a*) offer one of the sealed containers to the owner or person for the time being in charge or possession of the

tobacco product, substance or article from which the sample concerned was taken, S.18

(*b*) retain one of the sealed containers, and

(*c*) forward, or cause to be forwarded, one of the sealed containers to a designated laboratory for the purposes of analysis.

(3) Where a tobacco product, or any substance or article used in the manufacturing, processing or storage of a tobacco product is contained in a container and its division into parts is (for whatever reason) not practicable, an authorised officer, who wishes to take samples of such tobacco product, substance or article for the purposes of analysis, shall take possession of 3 such containers belonging to the same batch, and each such container shall be deemed to be part of a sample for the purposes of subsection (1), and the provisions of subsections (1) and (2) shall apply thereto accordingly.".

Repeal.

19.—Section 34 of the Principal Act is repealed.

Short title, commencement and collective citation.

20.—(1) This Act may be cited as the Public Health (Tobacco) (Amendment) Act 2004.

(2) This Act shall come into operation on such day or days as the Minister for Health and Children may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

(3) The Public Health (Tobacco) Act 2002 and this Act may be cited together as the Public Health (Tobacco) Acts 2002 and 2004.

SCHEDULE

DIRECTIVE 2003/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 MAY 2003

on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Economic and Social Committee(2),

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty (3),

Whereas:

(1) There are differences between the Member States' laws, regulations and administrative provisions on the advertising of tobacco products and related sponsorship. Such advertising and sponsorship in certain cases crosses the borders of the Member States or involves events organised on an international level, and are activities to which Article 49 of the Treaty applies. The differences in national legislation are likely to give rise to increasing barriers to the free movement between Member States of the products or services that serve as the support for such advertising and sponsorship. In the case of press advertising, certain obstacles have already been encountered. In the case of sponsorship, distortions of the conditions of competition are likely to increase and have already been noted as regards the organisation of certain major sporting and cultural events.

(2) Those barriers should be eliminated and, to this end, the rules relating to the advertising of tobacco products and related sponsorship should in specific cases be approximated. In particular, there is a need to specify the extent to which tobacco advertising in certain categories of publications is allowed.

(3) Article 95(3) of the Treaty requires the Commission, in its proposals for the establishment and functioning of the Internal Market concerning health, to take as a base a high level of protection. Within their respective powers, the European Parliament and the Council also seek to achieve this objective. The legislation of the Member States to be approximated is intended to protect public health by regulating the promotion of tobacco, an addictive product responsible for over half a million deaths in the Community annually, thereby avoiding a situation where young people begin smoking at an early age as a result of promotion and become addicted.

(1) OJ C 270, E, 25.9.2001, p.97
(2) OJ C 36, 8.2.2002, p.104
(3) Opinion of the European Parliament of 20 November 2002 (not yet published in the Official Journal) and Decision of the Council of 27 March 2003.

SCH

(4) The circulation in the Internal Market of publications such as periodicals, newspapers and magazines is subject to an appreciable risk of obstacles to free movement as a result of Member States' laws, regulations and administrative provisions which prohibit or regulate tobacco advertising in those media. In order to ensure free circulation throughout the Internal Market for all such media, it is necessary to limit tobacco advertising therein to those magazines and periodicals which are not intended for the general public such as publications intended exclusively for professionals in the tobacco trade and to publications printed and published in third countries, that are not principally intended for the Community market.

(5) The laws, regulations and administrative provisions of the Member States relating to certain types of sponsorship for the benefit of tobacco products with cross-border effects give rise to an appreciable risk of distortion of the conditions of competition for this activity within the Internal Market. In order to eliminate these distortions, it is necessary to prohibit such sponsorship only for those activities or events with cross-border effects which otherwise may be a means of circumventing the restrictions placed on direct forms of advertising, without regulating sponsorship on a purely national level.

(6) Use of information society services is a means of advertising tobacco products which is increasing as public consumption and access to such services increases. Such services, as well as radio broadcasting, which may also be transmitted via information society services, are particularly attractive and accessible to young consumers. Tobacco advertising by both these media has, by its very nature, a cross-border character, and should be regulated at Community level.

(7) Free distribution of tobacco products is subject to restriction in several Member States, given its high potential to create addiction. Cases of free distribution have occurred in the context of the sponsorship of events having cross-border effects and should therefore be prohibited.

(8) Internationally applicable standards for the advertising of tobacco products and related sponsorship are the subject of negotiations for the drafting of a World Health Organisation Framework Convention on Tobacco Control. These negotiations are intended to create binding international rules complementary to those contained in this Directive.

(9) The Commission should draw up a report on the implementation of this Directive. Provision should be made in the relevant Community programmes to monitor the effects of this Directive on public health.

(10) Member States should take adequate and effective steps to ensure control of the implementation of measures adopted pursuant to this Directive in compliance with their national legislation, as provided for in Commission Communication to the European Parliament and the Council on the role of penalties in implementing Community Internal Market legislation and in the Council Resolution of 29 June 1995 on the effective uniform application of Community law and on the penalties applicable for breaches of Community law in the International Market ([1]). Such means should include provision for intervention of persons or organisations with legitimate interest

([1]) OJ C 188, 22.7.1995, p.1

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in the suppression of activities that are not in conformity with this Directive.

(11) The penalties provided for under this Directive should be without prejudice to any other penalty or remedy provided under national law.

(12) This Directive regulates the advertising of tobacco products in the media other than television, i.e. in the press and other printed publications, in radio broadcasting and in information society services. It also regulates the sponsorship, by tobacco companies, of radio programmes and of events or activities involving, or taking place in, several Member States or otherwise having cross-border efffects, including the free or discounted distribution of tobacco products. Other forms of advertising, such as indirect advertising, as well as the sponsorship of events or activities without cross-border effects, fall outside the scope of this Directive. Subject to the Treaty, Member States retain the competence to regulate these matters as they deem necessary to guarantee the protection of human health.

(13) Advertising relating to medicinal products for human use is covered by Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use ([2]). Advertising relating to products intended for use in overcoming addiction to tobacco does not fall within the scope of this Directive.

(14) This Directive should be without prejudice to Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ([3]), which prohibits all forms of television advertising for cigarettes and other tobacco products. Directive 89/552/EEC provides that television programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or the provision of services, the advertising of which is prohibited by that Directive. Teleshopping for tobacco products is also prohibited by Directive 89/552/EEC.

(15) The transnational character of advertising is recognised by Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising ([4]). Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products ([5]), contains provisions on the use of misleading descriptions on the labelling of tobacco products, the cross-border effect of which has also been recognised.

(16) Directive 98/43/EC of the European Parliament and of the Council of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products ([6]) was annulled by

([2]) OJ L 311, 28.11.2001, p.67
([3]) OJ L298, 17.10.1989, p.23 Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p.60)
([4]) OJ L 250, 19.9.1984 p.17. Directive as amended by Directive 97/55/EC of the European Parliament and of the Council (OJ L 290, 23.10.1997, p.18)
([5]) OJ L 194, 18.7.2001, p.26
([6]) OJ L 213, 30.7.1998, p.9

the Court of Justice in Case C-376/98 *Federal Republic of Germany v European Parliament and Council of the European Union* (7). References to Directive 98/43/EC should therefore be construed as references to this Directive. SCH

(17) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of the proper functioning of the Internal Market to lay down rules on the advertising of tobacco products and related sponsorship. This Directive does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.

(18) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure respect for the fundamental right of freedom of expression,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject-matter and scope

1. The objective of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to the advertising of tobacco products and their promotion:

(*a*) in the press and other printed publications;

(*b*) in radio broadcasting;

(*c*) in information society services; and

(*d*) through tobacco related sponsorship, including the free distribution of tobacco products.

2. This Directive is intended to ensure the free movement of the media concerned and of related services and to eliminate obstacles to the operation of the Internal Market.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

(*a*) 'tobacco products' means all products intended to be smoked, sniffed, sucked or chewed inasmuch as they are made, even partly, of tobacco;

(*b*) 'advertising' means any form of commercial communications with the aim or direct or indirect effect of promoting a tobacco product;

(*c*) 'sponsorship' means any form of public or private contribution to any event, activity or individual with the aim or direct or indirect effect of promoting a tobacco product;

(7) [2000] ECR I-8419

SCH

(*d*) 'information society services' means services within the meaning of Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services (1).

Article 3

Advertising in printed media and information society services

1. Advertising in the press and other printed publications shall be limited to publications intended exclusively for professionals in the tobacco trade and to publications which are printed and published in third countries, where those publications are not principally intended for the Community market.

Other advertising in the press and other printed publications shall be prohibited.

2. Advertising that is not permitted in the press and other printed publications shall not be permitted in information society services.

Article 4

Radio advertising and sponsorship

1. All forms of radio advertising for tobacco products shall be prohibited.

2. Radio programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of tobacco products.

Article 5

Sponsorship of events

1. Sponsorship of events or activities involving or taking place in several Member States or otherwise having cross-border effects shall be prohibited.

2. Any free distribution of tobacco products in the context of the sponsorship of the events referred to in paragraph 1 having the purpose or the direct or indirect effect of promoting such products shall be prohibited.

Article 6

Report

No later than 20 June 2008, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive. That report shall be accompanied by any proposals for amendments to this Directive which the Commission deems necessary.

(1) OJ L 204, 21.7.1998, p.37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998. p.18)

Article 7 SCH

Penalties and enforcement

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those rules to the Commission by the date specified in Article 10 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Those rules shall include provisions ensuring that persons or organisations which, under national legislation, can justify a legitimate interest in the suppression of advertising, sponsorship or other matters incompatible with this Directive, may take legal action against such advertising or sponsorship or bring such advertising or sponsorship to the attention of an administrative body competent either to pronounce on complaints or to institute the appropriate legal proceedings.

Article 8

Free movement of products and services

Member States shall not prohibit or restrict the free movement of products or services which comply with this Directive.

Article 9

References to Directive 98/43/EC

References to the annulled Directive 98/43/EC shall be construed as references to this Directive.

Article 10

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 July 2005 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 11

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union.*

SCH

Article 12

Addresses

This Directive is addressed to the Member States.

Done at Brussels, 26 May 2003.

For the European Parliament
The President
P. COX

For the Council
The President
G. DRYS

New Tobacco Bill Gazetted

A vital public health measure.

16 October 2003

Health Minister Dr Manto Tshabalala-Msimang has released details of new provisions designed to protect public health by strengthening South Africa's tobacco control laws. A Bill to amend the Tobacco Products Control Act of 1993 is to be published for comment in a special Government Gazette tomorrow (Friday).

The Bill brings the existing Act in line with the provisions of the WHO's International Framework Convention on Tobacco Control (FCTC) and makes it more effective by closing loopholes and increasing fines.

South Africa is a cosignatory with 74 other countries of the FCTC that commits governments worldwide to taking measures to reduce the tobacco epidemic – which WHO calls a "global public health emergency".

The Bill also closes loopholes that have allowed easy contraventions of the Act.

"The government's position on smoking is very clear," said Dr Tshabalala- Msimang. "We have a responsibility to ensure that children don't start smoking, to protect nonsmokers from passive smoking and to help smokers quit. We have to create a social environment that promotes health. This is a moral and constitutional imperative."

The main provisions of the proposed amendment Bill are:

- To require larger health messages on cigarette packs, including picture messages.
- To increase fines for those who break the law, particularly with regard to allowing smoking in public places.
- To ban false descriptions of tobacco products, like "low-tar", "light" and "mild"
- To prohibit the presence of any child (that is, any person under 18 years) in a designated smoking area in a public place.
- To increase the minimum age for the sale of tobacco products to 18 years.
- To ban the duty-free sale of cigarettes.

"We have to find new ways to help people understand what emphysema, peripheral vascular disease and cancer mean to a smoker's health," said Dr Tshabalala-Msimang. "A picture really does speak more than a thousand words. While diehard smokers may ignore the messages, youngsters about to start smoking will have second thoughts and those thinking of quitting will be encouraged to quit."

The Department of Health is encouraged by the large number of South Africans who respect the laws against smoking in public places. However, some establishments have been breaking the law with apparent impunity. This suggests the current fines are not acting as a sufficient deterrent because they are too low. Increasing the fines to R20 000 for a first offence and to R100 000 for a second offence is intended to get proprietors of public places to treat the law with greater respect.

According to health experts, many smokers wrongly believe that "light", "mild" and "low tar" cigarettes are safer than regular cigarettes. There is no scientific evidence for these claims. Such labels falsely communicate safety and the WHO has recommended that such misleading terms be banned.

The Bill has been published for public comment and interested parties have until November 17 to make their views known in writing to the Department of Health, for the attention of:

The Director-General
Department of Health
Private Bag X828
Pretoria 0001

Released by the Communication Unit, Department of Health.

Inquiries to:
Patricia Lambert, Ministerial Adviser (082 566 3608)
Zanele Mthembu, Director of Health Promotion (082 574 3777)
Jo-Anne Collinge, Departmental Spokesperson (082 787 0202)

Government Gazette

Vol. 460 Pretoria 17 October 2003 No. 25601

AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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GOVERNMENT NOTICE

DEPARTMENT OF HEALTH

No. 1513 **17 October 2003**

TOBACCO PRODUCTS CONTROL AMENDMENT BILL, 2004

The Minister of Health intends to table the Tobacco Products Control Amendment Bill, 2004 in Parliament next year.

Interested persons are invited to submit any substantiated comments or representations on the Tobacco Products Control Amendment Bill, 2004 to the Director-General of Health: Private Bag X828, Pretoria, 0001(for the attention of the Director: Health Promotion), within one month of the date of this notice.

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Tobacco Products Control Act, 1993, so as to insert definitions of 'brand element', 'composition', 'distribute', 'emission', 'manufacturer', 'promotion', 'public conveyance' and 'vending machine'; to amend definitions of 'advertisement', 'package', 'public place' and 'tobacco product'; to provide for the enforcement of national regulations; to prohibit and restrict sales to and by minors; to restrict tobacco sales from vending machines; to prohibit the tax-free and duty-free sale of tobacco products; to provide measures to prevent illicit trade in tobacco products; to increase the penalties; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of the Preamble

1. The Preamble of the Tobacco Products Control Act, 1993 (hereinafter referred to as the "principal Act"), is hereby amended by the substitution for the Preamble of the following:

"**Preamble**

ACKNOWLEDGING that tobacco use-

is extremely injurious to the health of both smokers or non-smokers and warrants, in the public interest, a restrictive legislation;

is a widely accepted practice among adults, which makes it inappropriate to ban completely;

REALISING that the association of smoking with social success, business advertisement and sporting prowess through the use of advertising and promotion may have the particularly harmful effect of encouraging children and young people to take up smoking;

CONSIDERING that the extent of the effects of smoking on health calls for strong action to deter people from taking up smoking, to protect people, especially young people from the harmful effects of tobacco products and to encourage existing smokers to give up smoking; and

RESOLVING to align the health system with the democratic values of the Constitution and the International Framework Convention of Tobacco Control and to enhance and protect the fundamental rights of citizens by discouraging the use, promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death;".

Amendment of section 1 of Act 83 of 1993

2. Section 1 of the Tobacco Products Control Act, 1993 (hereinafter referred to as the "principal Act"), is hereby amended by the -

(a) substitution for the definition of "advertisement" of the following definition:

" **'advertisement'**, in relation to any tobacco product means any drawn, still or moving picture, sign, symbol, brand element, other visual image or message or audible message aimed at the public and designed to promote or publicise a tobacco product or has the effect of promoting or publicising a tobacco product or to promote smoking behaviour **[and includes the use in any advertisement or promotion aimed at the public of a tobacco product manufacturer's company name where the name or any part of the name is used as or is included in a tobacco product trade mark,]** and includes product stacking and product displays of any kind or size, and 'advertise' has a corresponding meaning;";

(b) insertion after the definition of "advertisement" of the following definitions:

" 'brand element' includes the brand name, trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, recognizable colour or pattern of colours, or any other indicia of product identification identical or similar to, or identifiable with those used for any brand tobacco product;";

" 'composition' refers to the content, arrangement or combination of substances included in the processing and manufacture of tobacco products;";

" '**emission**' means any substance or combination of substances that is produced as a result of a tobacco product being lit;";

(*c*) insertion after the definition of "employed" or "employment" of the following definitions:

" '**manufacturer**' includes any entity that is associated with the manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer;";

(*d*) substitution for the definition of "package" of the following definition:

" '**package**' means the container, receptacle or wrapper in which tobacco products are sold, supplied or distributed;";

(*e*) insertion after the definition of "private dwelling" of the following definitions:

" '**promotion**' is the practice of fostering awareness of and positive attitudes towards a tobacco product, brand or manufacturer for the purpose of selling the tobacco product or encouraging tobacco use, through various means including direct advertisement, discounts, incentives, rebates, free distribution, entertainments, organised activities, questionnaires or surveys, promotion of brand elements by means of related events and products through any public medium of communication including cinematographic film, television production, radio production or the Internet, and 'promote' has a corresponding meaning;";

" '**public conveyance**' includes any commercial or chartered aircraft, ship, boat, train, bus, mini-bus or taxi;";

(*f*) substitution for the definition of "public place" of the following definition:

" '**public place**' means any indoor, **[or]** enclosed or semi-enclosed area which is open to the public or any part of the public, and includes a workplace and a public conveyance as well as the area within five metres of any doorways or entrances to the public place, workplace or public conveyance;";

(*g*) the insertion after the definition of "public place" of the following definition:

" '**sell**' in relation to this Act means to sell, offer to sell, expose for sale, distribute, 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, bonus or otherwise without charge, and 'sale' has a corresponding meaning;";

(*h*) substitution for the definition of "tobacco product" of the following definitions:

"'tobacco product' means any product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves, and including cigarette papers, tubes and filters;";

(*i*) insertion after the definition of "trade mark" of the following definition:

"'vending machine' means any means of distribution of tobacco products that is not monitored in the prescribed manner by a human being.".

Amendment of section 2 of Act 83 of 1993

3. Section 2 of the principal Act is hereby amended by-

(*a*) by the substitution for subsection (2) of the following subsection:

"(2) The Minister may by notice in the *Gazette* prohibit or restrict smoking in specified outdoor public spaces where persons are likely to congregate within close proximity to one another or where smoking may pose a fire or other hazard.";

(*b*) the substitution for subsection (3) of the following subsection:

"(3) A municipality shall have the power, duty and obligation to enforce this Act and the regulations made in terms thereof in its area of jurisdiction.";

(c) the substitution for subsection (4) of the following subsection:

"(4) An employer, owner, lessee or person in control of a public place or specified outdoor space shall, in accordance with regulations made in terms of this Act, post signs informing employees and the public of the prohibitions on smoking.";

(*d*) the substitution for subsection (5) of the following subsection:

"(5) The Minister may make regulations-

(*a*) prescribing the location, content, size and format of any signs required in terms of this Act; and

(*b*) generally as needed to carry out this section.";

(e) the substitution for subsection (6) of the following subsection:

"(6) All public places, workplaces and public conveyances and any outdoor spaces designated non-smoking areas in terms of this Act shall post signs, in accordance with the regulations.";

(f) the substitution for subsection (7) of the following subsection:

"(7) Children under the age of 18 years shall not be permitted in a permissible smoking area.".

Amendment of section 3 of Act 83 of 1993

4. Section 3 of the principal Act is hereby amended by-

(a) the substitution for the heading of section 3 of the following heading:

"Advertising, sponsorship, promotion and distribution of tobacco products and [required] information that is required in respect of [packages] the packaging and labelling of tobacco products.".

(b) the substitution for subsection (1) of the following subsection:

"(1) No person shall advertise or promote or cause to advertise or promote by any other person, a tobacco product or a tobacco product-related brand element through direct or indirect means, including through sponsorship of any organization, event, service, physical establishment, programme, project, bursary, scholarship or any other vehicle of any kind.";

(c) the insertion after subsection (2) (c) of the following subsection:

"(d) make any financial contribution to any person in respect of any organization, event, service, physical establishment, programme, project, bursary scholarship or any other vehicle of any kind.";

(d) the substitution for subsection (3) and subsection (4) of the following subsections:

"(3) No person shall sell or offer to sell tobacco products except in a package containing the quantities or number of units prescribed by regulation.

(4) Notwithstanding any regulation made under this Act, no person shall sell or offer to sell tobacco products in the following places:

(a) health institutions, including hospitals, pharmacies and clinics;

(b) any educational or training institutions, including primary and secondary schools, and educational institutions where more than 50% of the learners are under the age of 18 years;";

(e) the insertion after **subsection (5)** of the following subsections:

"(6) No person shall sell or offer to sell a tobacco product unless it is hidden from view of the general public at the point of sale, except where the sole purpose of the retailer is to sell tobacco products.

(7) Notwithstanding subsection (6), retailers may post, in accordance with regulations passed in terms of this Act, a notice indicating that tobacco products are available for sale, the specific brands available for sale, and their respective prices, provided that brand elements other than the brand names are not displayed.

(8) 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.

(9) No person shall sell or offer to sell tobacco products at retail unless signs bearing prescribed health warnings and other prescribed information are posted at the point of sale in accordance with regulations passed in terms of this Act.

(10) No person shall sell, offer to sell, supply or distribute to the public or any member of the public tobacco products through direct offers, the postal services or the Internet.

(11) No person shall, at any place or premises in which tobacco or tobacco-related products are sold at retail, display any sign concerning the legal age at which tobacco products may be purchased unless the sign is consistent with the regulations made in terms of this Act.

(12) No person shall manufacture, distribute, or import a tobacco product unless the package containing it displays, in the prescribed form and manner, including through an enclosed leaflet if prescribed, the information required by the regulations about the product and its emissions, about the health hazards and health effects arising from the use of the product or from its emissions, other health related messages such as, inter alia, advice on how to quit smoking, and markings designed to facilitate efforts to identify illegally manufactured or distributed tobacco products or products on which tax has not

been paid and the messages may be in the form of pictures or pictograms.

(13) No person shall package or label a tobacco product in any way that is false, misleading, deceptive or likely to create any erroneous, deceptive or misleading impression about its characteristics, properties, health effects, toxicity, composition, merit, safety, hazards or emissions, including any term, descriptor, trademark, figurative or other sign that directly or indirectly creates that impression that a particular tobacco product is less harmful than another tobacco product, and this includes, inter alia, terms such as "low tar", "light", "ultra-light", or mild.

(14) Any requirements arising from the above-mentioned clauses do not relieve a manufacturer or retailer of further legal obligations or other liabilities in terms of any other law to warn consumers of the risks of using tobacco products.

(15) The Minister may make regulations in terms of the objects of the Act for purposes of achieving the objects of this Act:

(*a*) regarding the content and format of information described in subsection 12 of this Act that must appear on packages and in leaflets;

(*b*) regarding information that may not appear on packages or in leaflets;

(*c*) prescribing quantities of tobacco to be sold in a single package;

(*d*) prescribing places where tobacco products may not be sold;

(*e*) prescribing notices and signage at points of sale; and

(*f*) generally as needed to carry out this section of this Act.".

Amendment of section 3A of Act 83 of 1993

5. Section 3A of the principal Act is hereby amended by the substitution for section 3A of the following section:

"**3A Product Regulation**

(1) No person shall manufacture, sell, or import a tobacco product except in compliance with this Act and regulations made in terms of this

Act."

(2) Every manufacturer and importer of a tobacco product shall provide the Minister, in the prescribed manner and within the prescribed time, prescribed information about the product and its emissions as required by the regulations.

(3) The Minister may make regulations:

(a) establishing standards for the manufacture of tobacco products, including

(i) prescribing the amount of substances that may be contained in the product or its emissions;

(ii) prescribing substances that may not or may not be added to tobacco products; and

(iii) prescribing product design standards to meet the health and safety objectives of the Act.

(b) prescribing test methods, including methods to assess conformity with the standards;

(c) prescribing information that manufacturers and importers must provide to the Minister or the public about tobacco products and their emission, including sales data on product promotion and information on product composition, ingredients, hazardous properties and brand elements;

(d) generally as needed to carry out this section of this Act.".

Amendment of section 4 of Act 83 of 1993

6. Section 4 of the principal Act is hereby amended by-

(a) the substitution for the heading of section 4 of the following heading:

"4 **Prohibition of sale of tobacco products to and by persons under the age of [16] 18 years.**".

(b) the substitution for subsection (1) of the following subsection:

"(1) No person shall sell or supply any tobacco product to any person under the age of **[16]** 18 years **[, whether for his personal use or not]**.".

(c) The insertion after subsection (1) of the following subsections:

"(2) No person under the age of 18 years shall sell or offer to sell tobacco products."

"(3) It shall not be a defence to subsection (1) that the person appeared to be 18 years old or older."

Amendment of section 5 of Act 83 of 1993

7. Section 5 of the principal Act is hereby amended by-

(a) the substitution for the heading of section (5) of the following heading:

" **Restriction on [use of vending machines] specific forms of the sale of tobacco products**"

(b) the substitution for subsection (1) of the following subsection:

"(1) The sale of tobacco products **[from]** through vending machines shall be restricted **[to places in which purchases from such machines are *inaccessible to persons under the age of sixteen years]*** and the Minister may make regulations regarding the sale of tobacco products through vending machines".

(c) the substitution for subsection (2) of the following subsection:

"(2) The sale of tax- and duty- free tobacco products shall be prohibited within a period of three months after the coming into operation of this Act .".

(d) the deletion of subsection (3)

Amendment of section 6 of Act 83 of 1993

8. Section 6 of the principal Act is hereby amended by-

(a) the substitution for subsection (1) of the following subsection:

"(1) In addition to the regulations specified in this Act, the Minister may make regulations regarding any matter required or permitted to be prescribed in terms of a provision of this Act, or any regulations that may reasonably be

prescribed in order to achieve the objects of this Act.".

(*b*) the deletion of subsection (2).

(*c*) the substitution for subsection (3) of the following subsection:

"(3) The Minister shall, not less than [three months] one month before issuing any regulations under this Act, cause a draft of the regulation to be published in the *Gazette*, together with a notice declaring his or her intention to issue such regulation and inviting interested persons to furnish him or her with any comments thereon or representations in connection therewith within a specified period.".

Amendment of section 7 of Act 83 of 1993

9. Section 7 of the principal Act is hereby amended by-

(*a*) the substitution for subsection (1) of the following subsection:

"(1) Any person who contravenes section 2(1) or fails to comply with any notice issued in terms section 2(1) shall be guilty of an offence and liable on conviction to a fine not exceeding [R200] R20 000 or to such penalties as may be determined for the first offence, and in the case of a any subsequent offences to a fine of not less than R20 000 and not more than R 100 000 or such penalties as may be determined;".

(*b*) the substitution for subsection (2) of the following subsection:

"(2) Any person who contravenes or fails to comply with any provisions of sections 4(1) or 5(1) or fails to comply with any notice issued in terms section 4(1) shall be guilty of an offence and liable on conviction to a fine not exceeding [R10 000] R50 000 or such [imprisonment] penalties as may be determined for the first offence, and in the case of a any subsequent offences to a fine of not less than R50 000 and not more than R 150 000 or such penalties as may be determined;".

(*c*) the substitution for subsection (3) of the following subsection:

"(3) Any person who contravenes or fails to comply with the provisions of section 3, 3A or 4A or any notice issued in terms of section 3, 3A or 4A shall be guilty of an offence and liable on conviction to a fine not exceeding [R200 000] R500 000 or to such [imprisonment] penalties as may be determined for the first offence, and in the case of a any subsequent offences to a fine of not less than R500 000 and not more than R 900 000 or such penalties as may be determined.".

(*d*) the insertion after subsection (3) of the following subsections:

"(4) Any person who contravenes or fails to comply with any provisions of sections 5(2) shall be guilty of an offence and liable on conviction to a fine not exceeding R250 000 or such penalties as may be determined for the first offence, and in the case of a any subsequent offences to a fine of not less than R250 000 and not more than R 700 000 or such penalties as may be determined.

(5) Any person found guilty of smoking in a place where smoking is prohibited shall be liable to a fine of not less than R300 and not more than R 500 for the first offence, and of not less than R500 and not more than R1 000 for subsequent offences.".

10. Transitional arrangements

(1) Any notice or regulation issued by the Minister prior to the coming into operation of this Act shall remain in force until amended, repealed or replaced by a notice or regulation made by the Minister in terms of this Act.

11. Short title and commencement

(1) This Act shall be called the Tobacco Products Control Amendment Act, 2003, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed in respect of different provisions of this Act.

MEMORANDUM ON THE OBJECTS OF THE TOBACCO PRODUCTS CONTROL AMENDMENT BILL, 2003

1. The Bill seeks to amend the Tobacco Products Control Amendment Act, 1993 in order to bring local legislation in line with the International Framework Convention of Tobacco Control to which the Republic of South Africa was a cosignatory. It further intends to close loopholes that exist in the present tobacco legislation that were exploited by the tobacco industry and which made prosecution on contraventions of the Act very difficult.

2. CLAUSE-BY-CLAUSE ANANLYSIS OF THE BILL

2.1 Clause 1 amends the preamble to also insert the International Framework Convention of Tobacco Control.

2.2 Clause 2 seeks to amend some of the definitions in the present tobacco legislation as well as to insert some new definitions to extent the application of Tobacco Products Control Act and to close down on any loopholes that exist in the present tobacco legislation.

2.3 Clause 3 seeks to provide for the Minister to restrict or prohibit smoking in certain outdoor places such as schools, hospitals and other health institutions and further seeks to mandate municipalities to enforce the Tobacco Products Control Act and the regulations issued in terms thereof.

2.4 Clause 4 seeks to restrict the sale of tobacco products as well as the display thereof and further seeks to empower the Minister to regulate the format of information on the packaging which could include pictorial information and package inserts and quantities in which tobacco products may be sold as well as where these products should be kept by a retailer.

2.5 Clause 5 seeks for a manufacturer, importer and retailer to supply to the Minister with information relating to the tobacco product and further provides for the Minister to issue regulations relating to the type of information as well as the format in which such information shall be submitted to the Minister.

2.6 Clause 6 seeks to increase the restriction on the sale of a tobacco product to Children under the age of 16 years to under the age of 18 years to bring the legislation in line with the Constitution as well as the International Framework Convention of Tobacco Control.

2.7 Clause 7 seeks to restrict the sale of tobacco products through vending machines and seeks to prohibit the sale of tax- and duty-free tobacco products.

2.8 Clause 8 seeks to amend the section on regulations and provides for the Minister to give notice of her intentions to make regulations by publication of a notice in the *Gazette* not less than one month in advance in order to give interested parties an opportunity to make comments.

2.9 Clause 9 seeks to increase the fine for contravening the provisions of the Act and the regulations published in terms thereof to the extent that it will be a deterrent for persons who are trying to circumvent the provisions or are not complying with the provisions of the Act and the regulations.

2.10 Clause 10 deals with the transitional arrangements prior to the coming into operation of the Bill.

2.11 Clause 11 contains the short title of the Bill and provides for the commencement of date of the Bill.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The Bill provides for certain functions to be executed by municipalities. However, there will be additional personnel requirements as the functions imposed by the Bill will be executed by personnel already employed by municipalities i.e. environmental health inspectors and metro police officers. However, there could be an additional load on the present personnel involved in the execution of criminal justice as offenders contravening the tobacco legislation will have to be prosecuted and tried through the criminal justice system.

4. FINANCIAL IMPLICATIONS FOR THE STATE

There will be no negative financial implications for the State. The positive financial implications that the Bill will have for the State is that additional revenue will be generated through the prohibition of duty- and tax-free sales of tobacco products as well as the fines imposed for any contravention of the tobacco legislation.

5. IMPLICATIONS FOR THE PROVINCES

There will be no implications as a result of the Bill forthcoming to any of the provinces.

6. IMPLICATIONS FOR LOCAL AUTHORITIES

The Bill will have an impact on municipalities in that it seeks a municipality to implement and enforce the provisions of the tobacco legislation. To this extent the functions and duties of officers such as health inspectors and port health officials already in the employ of a municipality will be extended to include the enforcement of the tobacco legislation.

7. CONSULTATIONS

The Department of Health consulted apart from such stakeholders such as the tobacco industry and British American Tobacco, also consulted with the South African Police Service, Department of Trade and Industry, Department of Agriculture and Land Affairs, Department of Finance, Department of Provincial and Local Government, Department of Justice and the Director of Public Prosecutions.

The Director of Public Prosecutions has expressed the opinion that the degree of some of the fines might be excessive but it has been decided to revisit this issue once the comment of the public has also been received.

The Department of Local and Provincial Government has further indicated that as municipalities do have the capacity in enforcing the provisions envisaged by the Bill.

The Department of Trade and Industry has questioned the prohibition on the duty- and tax-free sale of tobacco products, but the Department of Health is of the opinion that there are no financial or legal considerations which justify the duty- and tax-free sale of tobacco products.

8. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Health are of the opinion that the Bill must be dealt with in accordance with Parliamentary procedure established by section 76(1) or (2) of the Constitution, since it falls within the functional areas listed in Schedule 4 to the Constitution, namely "Health Services" and Municipal health services".

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
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Tobacco Advertising and Promotion Act 2002

2002 Chapter 36

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Tobacco Advertising and Promotion Act 2002

2002 Chapter 36

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An Act to control the advertising and promotion of tobacco products; and for connected purposes.

[7th November 2002]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1 Meaning of "tobacco advertisement" and "tobacco product"

In this Act-

"tobacco advertisement" means an advertisement-

(a) whose purpose is to promote a tobacco product, or

(b) whose effect is to do so, and

"tobacco product" means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.

2 Prohibition of tobacco advertising

(1) A person who in the course of a business publishes a tobacco advertisement, or causes one to be published, in the United Kingdom is guilty of an offence.

(2) A person who in the course of a business prints, devises or distributes in the United Kingdom a tobacco advertisement which is published in the United Kingdom, or causes such a tobacco advertisement to be so printed, devised or distributed, is guilty of an offence.

(3) Distributing a tobacco advertisement includes transmitting it in electronic form, participating in doing so, and providing the means of transmission.

(4) It is not an offence under subsection (1) for a person who does not carry on business in the United Kingdom to publish or cause to be published a tobacco advertisement by means of a website which is accessed in the United Kingdom; and, in that case, devising the advertisement or causing it to be devised is not an offence under subsection (2).

3 Advertising: newspapers, periodicals etc

If a newspaper, periodical or other publication ("the publication") containing a tobacco advertisement is in the course of a business published in the United Kingdom-

(a) any proprietor or editor of the publication is guilty of an offence,

(b) any person who (directly or indirectly) procured the inclusion of the advertisement in the publication is guilty of an offence, and

(c) any person who sells the publication, or offers it for sale, or otherwise makes it available to the public, is guilty of an offence.

4 Advertising: exclusions

(1) No offence is committed under section 2 or 3 in relation to a tobacco advertisement-

(a) if it is, or is contained in, a communication made in the course of a business which is part of the tobacco trade, and for the purposes of that trade, and directed solely at persons who-

(i) are engaged in, or employed by, a business which is also part of that trade, and

(ii) fall within subsection (2),

in their capacity as such persons,

(b) if it is, or is contained in, the communication made in reply to a particular request by an individual for information about a tobacco product, or

(c) if it is contained in a publication (other than an in-flight magazine) whose principal market is not the United Kingdom (or any part of it), or if it is contained in any internet version of such a publication.

(2) A person falls within this subsection if-

(a) he is responsible for making decisions on behalf of the business referred to in subsection (1)(a)(i) about the purchase of tobacco products which are to be sold in the course of that business,

(b) he occupies a position in the management structure of the business in question which is equivalent in seniority to, or of greater seniority than, that of any such person, or

(c) he is the person who, or is a member of the board of directors or other body of persons (however described) which, is responsible for the conduct of the business in question.

(3) The appropriate Minister may provide in regulations that no offence is committed under section 2 in relation to a tobacco advertisement which-

(a) is in a place or on a website where tobacco products are offered for sale, and

(b) complies with requirements specified in the regulations.

(4) The regulations may, in particular, provide for the meaning of "place" in subsection (3)(a).

5 Advertising: defences

(1) A person does not commit an offence under section 2 or section 3 (a) or (b), in connection with an advertisement whose purpose is to promote a tobacco product, if he did not know, and had no reason to suspect, that the purpose of the advertisement was to promote a tobacco product.

(2) A person does not commit such an offence in connection with an advertisement whose effect is to promote a tobacco product if he could not reasonably have foreseen that that would be the effect of the advertisement.

(3) A person does not commit an offence under section 2(2) or 3(a) or (b) if he did not know, and had no reason to suspect, that the tobacco advertisement would be published in the United Kingdom.

(4) A person does not commit an offence under section 2(2) of distributing or causing the distribution of a tobacco advertisement, otherwise than as mentioned in section 2(3), if he did not know, and had no reason to suspect, that what he distributed or caused to be distributed was, or contained, a tobacco advertisement.

(5) In relation to a tobacco advertisement which is distributed as mentioned in section 2(3), a person does not commit an offence under section 2(2) of distributing it or causing its distribution if-

(a) he was unaware that what he distributed or caused to be distributed was, or contained, a tobacco advertisement,

(b) having become aware of it, it was not reasonably practicable for him to prevent its further distribution, or

(c) he did not carry on business in the United Kingdom at the relevant time.

(6) A person does not commit an offence under section 3(c) if he did not know, and had no reason to suspect, that the publication contained a tobacco advertisement.

6 Specialist tobacconists

(1) A person does not commit an offence under section 2 if the tobacco advertisement-

(a) was in, or fixed to the outside of the premises of, a specialist tobacconist,

(b) was not for cigarettes or hand-rolling tobacco, and

(c) complied with any requirements specified by the appropriate Minister in regulations in relation to tobacco advertisements on the premises of specialist tobacconists.

(2) A specialist tobacconist is a shop selling tobacco products by retail (whether or not it also sells other things) more than half of whose sales on the premises in question derive from the sale of cigars, snuff, pipe tobacco and smoking accessories.

(3) The sales referred to in subsection (2) are to be measured by sale

price-

(a) during the most recent period of twelve months for which accounts are available, or

(b) during the period for which the shop has been established, if it has not been established long enough for twelve months' accounts to be available.

(4) "Shop", in subsections (2) and (3), includes a self-contained part of a shop; and, in that case, "premises" in subsections (1) and (2) means that self-contained part of the shop.

7 Developments in technology

The Secretary of State may by order amend any provision of this Act if he considers it appropriate to do so in consequence of any developments in technology relating to publishing or distributing by electronic means.

8 Displays

(1) A person who in the course of a business displays or causes to be displayed tobacco products or their prices in a place or on a website where tobacco products are offered for sale is guilty of an offence if the display does not comply with such requirements (if any) as may be specified by the appropriate Minister in regulations.

(2) It is not an offence under subsection (1) for a person who does not carry on business in the United Kingdom to display or cause to be displayed tobacco products or their prices by means of a website which is accessed in the United Kingdom.

(3) The regulations may, in particular, provide for the meaning of "place" in subsection (1).

(4) The regulations must make provision for a display which also amounts to an advertisement to be treated for the purpose of offences under this Act-

(a) as an advertisement and not as a display, or

(b) as a display and not as an advertisement.

9 Prohibition of free distributions

(1) A person is guilty of an offence if in the course of a business he-

(a) gives any product or coupon away to the public in the United Kingdom, or

(b) causes or permits that to happen,

and the purpose or effect of giving the product or coupon away is to promote a tobacco product.

(2) It does not matter whether the product or coupon accompanies something else, or is given away separately.

(3) No offence is committed under subsection (1) if-

(a) the business referred to in subsection (1) is part of the tobacco trade,

(b) the product or coupon is given away for the purposes of that trade,

(c) each person to whom it is given-

(i) is engaged in, or employed by, a business which is also part of the tobacco trade, and

(ii) falls within subsection (4), and

(d) the product or coupon is given to each such person in his capacity as such a person.

(4) A person falls within this subsection if-

(a) he is responsible for making decisions on behalf of the business referred to in subsection (3)(c)(i) about the purchase of tobacco products which are to be sold in the course of that business,

(b) he occupies a position in the management structure of the business in question which is equivalent in seniority to, or of greater seniority than, that of any such person, or

(c) he is the person who, or is a member of the board of directors or other body of persons (however described) which, is responsible for the conduct of the business in question.

(5) A person does not commit an offence under this section-

(a) where it is alleged that the purpose of giving the product or coupon away was to promote a tobacco product, if he did not know and had no reason to suspect that that was its purpose, or

(b) where it is alleged that the effect of giving the product or coupon away was to promote a tobacco product, if he could not reasonably have foreseen that that would be its effect.

(6) "Coupon" means a document or other thing which (whether by itself or not) can be redeemed for a product or service or for cash or any other benefit.

(7) The Secretary of State may make regulations providing for this

section to apply to making products or coupons available for a nominal sum or at a substantial discount as it applies to giving them away.

(8) If regulations under subsection (7) provide for this section to apply to making products or coupons available at a substantial discount, the regulations must provide for the meaning of "substantial discount".

(9) The regulations may provide that this section is to apply in that case with such modifications (if any) specified in the regulations as the Secretary of State considers appropriate.

10 Prohibition of sponsorship

(1) A person who is party to a sponsorship agreement is guilty of an offence if the purpose or effect of anything done as a result of the agreement is to promote a tobacco product in the United Kingdom.

(2) A sponsorship agreement is an agreement under which, in the course of a business, a party to it makes a contribution towards something, whether the contribution is in money or takes any other form (for example, the provision of services or of contributions in kind).

(3) A person does not commit an offence under this section-

(a) where it is alleged that the purpose of what was done as a result of the agreement was to promote a tobacco product in the United Kingdom, if he did not know, and had no reason to suspect, that that was its purpose, or

(b) where it is alleged that the effect of what was done as a result of the agreement was to promote a tobacco product in the United Kingdom, if he could not reasonably have foreseen that that would be its effect.

(4) A person does not commit an offence under this section if he did not know and had no reason to suspect that the contribution referred to in subsection (2) was made in the course of a business.

11 Brandsharing

(1) The Secretary of State may by regulations make provision prohibiting or restricting, in such circumstances and subject to such exceptions as may be specified in the regulations, the use-

(a) in connection with any service or product (other than a tobacco product), of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is

connected with a tobacco product, or

(b) in connection with any tobacco product, of any name, emblem or other feature of a description specified in the regulations which is the same as, or similar to, a name, emblem or other feature so specified which is connected with any service or product other than a tobacco product.

(2) Provision made by virtue of subsection (1) may prohibit or restrict only that use whose purpose is to promote a tobacco product, or whose effect is to do so.

(3) If regulations under this section provide for a prohibition or restriction to be subject to an exception, the regulations may also make such provision as the Secretary of State considers appropriate for a corresponding exception to have effect for the purposes of offences under section 2, 3, 8, 9 or 10.

(4) A person who contravenes a prohibition or restriction contained in regulations made under this section is guilty of an offence.

12 Television and radio broadcasting

(1) In this section "the 1990 Act" means the Broadcasting Act 1990 (c. 42) and "the 1996 Act" means the Broadcasting Act 1996 (c. 55).

(2) This Act does not apply in relation to anything included in a service to which any of subsections (3) to (6) apply.

(3) This subsection applies to a service which-

(a) falls within section 2(1) of the 1990 Act (television services, etc regulated under Part 1 of the 1990 Act or Part 1 of the 1996 Act), and

(b) is not an additional service within the meaning of section 48 (1) of the 1990 Act other than a teletext service.

(4) This subsection applies to a local delivery service within the meaning of section 72 of the 1990 Act.

(5) This subsection applies to a service falling within section 84 of the 1990 Act (independent radio services regulated under Part 3 of the 1990 Act or Part 2 of the 1996 Act) other than a digital additional service within the meaning of section 63(1) of the 1996 Act.

(6) This subsection applies to a service provided by the British Broadcasting Corporation or Sianel Pedwar Cymru (the Welsh Authority referred to in section 56 of the 1990 Act).

13 Enforcement

(1) For the purposes of this Act "enforcement authority" means-

(a) in England and Wales, a weights and measures authority,

(b) in Scotland, a local weights and measures authority, and

(c) in Northern Ireland, a district council.

(2) It is the duty of an enforcement authority to enforce within its area the provisions of this Act and regulations made under it.

(3) The appropriate Minister may direct, in relation to cases of a particular description or a particular case, that any duty imposed on an enforcement authority in England and Wales or Scotland by subsection (2) shall be discharged by the appropriate Minister and not by the enforcement authority.

(4) The Department of Health, Social Services and Public Safety may direct, in relation to cases of a particular description or a particular case, that any duty imposed on an enforcement authority in Northern Ireland by subsection (2) shall be discharged by the Department and not by the enforcement authority.

(5) The Secretary of State may take over the conduct of any proceedings instituted in England and Wales by another person under any provision of this Act or regulations made under it.

(6) The Department of Health, Social Services and Public Safety may take over the conduct of any proceedings instituted in Northern Ireland by another person under any provision of this Act or regulations made under it.

(7) For the purposes of the trying of offences under this Act or regulations made under it-

(a) any such offence committed in England or Wales may be treated as having been committed in any place in England or Wales, so that any magistrates' court in England or Wales has jurisdiction to try the offence, and

(b) any such offence committed in Northern Ireland may be treated as having been committed in any place in Northern Ireland, so that any magistrates' court in Northern Ireland has jurisdiction to hear and determine a complaint charging the offence.

14 Powers of entry, etc

(1) A duly authorised officer of an enforcement authority has the

right, on producing, if so required, his written authority-

(a) at any reasonable hour to enter any premises, other than premises used only as a private dwelling house, which he considers it is necessary for him to enter for the purpose of the proper exercise of his functions under this Act,

(b) to carry out on those premises such inspections and examinations as he considers necessary for that purpose,

(c) where he considers it necessary for that purpose, to require the production of any book, document, data, record (in whatever form it is held) or product and inspect it, and take copies of or extracts from it,

(d) to take possession of any book, document, data, record (in whatever form it is held) or product which is on the premises and retain it for as long as he considers necessary for that purpose,

(e) to require any person to give him such information, or afford him such facilities and assistance, as he considers necessary for that purpose.

(2) A duly authorised officer of an enforcement authority may make such purchases and secure the provision of such services as he considers necessary for the purpose of the proper exercise of his functions under this Act.

(3) A person is not obliged by subsection (1) to answer any question or produce any document which he would be entitled to refuse to answer or to produce-

(a) in or for the purposes of proceedings in a court in England and Wales, where the question is asked or the document is required by a duly authorised officer of an enforcement authority in England and Wales,

(b) in or for the purposes of proceedings in a court in Northern Ireland, where the question is asked or the document is required by a duly authorised officer of an enforcement authority in Northern Ireland,

(c) in or for the purposes of proceedings in a court in Scotland, where the question is asked or the document is required by a duly authorised officer of an enforcement authority in Scotland.

(4) If a justice of the peace is satisfied by any written information on oath that for the purpose of the proper exercise of the functions of an enforcement authority under this Act there are reasonable grounds for entry into any premises, other than premises used only as a private dwelling house, and-

(a) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under

this subsection has been given to the occupier, or

(b) that an application for admission, or the giving of such notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant signed by him, which shall continue in force until the end of the period of one month beginning with the date on which he signs it, authorise any duly authorised officer of an enforcement authority to enter the premises, if need be by force.

(5) A duly authorised officer entering any premises by virtue of subsection (1) or of a warrant under subsection (4) may take with him when he enters those premises such other persons and such equipment as he considers necessary.

(6) On leaving any premises which a duly authorised officer is authorised to enter by a warrant under subsection (4), that officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(7) Where by virtue of subsection (1)(d) a duly authorised officer takes possession of any item, he shall leave on the premises from which the item was removed a statement giving particulars of what he has taken and stating that he has taken possession of it.

(8) In the application of this section to Northern Ireland, the reference in subsection (4) to any information on oath shall be construed as a reference to any complaint on oath.

(9) In the application of this section to Scotland, the reference in subsection (4) to a justice of the peace shall be construed as a reference to a sheriff.

(10) Where a direction of the appropriate Minister has effect under section 13(3), this section and section 15 have effect, in relation to any case or case of a description specified in the direction, as if references to a duly authorised officer of an enforcement authority were references to a person acting on behalf of the appropriate Minister.

(11) Where a direction of the Department of Health, Social Services and Public Safety has effect under section 13(4), this section and section 15 have effect, in relation to any case or case of a description specified in the direction, as if references to a duly authorised officer of an enforcement authority were references to a person acting on behalf of the Department.

(12) Where-

(a) the Secretary of State takes over any proceedings by virtue of section 13(5), or

(b) the Department of Health, Social Services and Public Safety takes over the conduct of any proceedings by virtue of section 13 (6),

this section and section 15 have effect, in relation to any case which is the subject of such proceedings, as if references to a duly authorised officer of an enforcement authority were references to a person acting on behalf of the Secretary of State or (as the case may be) the Department.

15 Obstruction, etc of officers

(1) A person who-

(a) intentionally obstructs a duly authorised officer of an enforcement authority who is acting in the proper exercise of his functions under this Act, or

(b) without reasonable cause fails to comply with any requirement made of him by such an officer who is so acting,

is guilty of an offence.

(2) A person who, in giving any information which is properly required of him by a duly authorised officer of an enforcement authority, makes a statement which is false in a material particular is guilty of an offence.

(3) A person does not commit an offence under subsection (2) if-

(a) he did not know the material particular was false, and

(b) he had reasonable grounds to believe that it was true.

16 Penalties

(1) A person guilty of an offence under section 15(1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under or by virtue of any other provision of this Act is liable-

(a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both, or

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both.

17 Defences: burden of proof

(1) This section applies where a person charged with an offence under this Act relies on a defence under any of sections 5(1) to (6), 6(1), 9(5), 10(3) and (4) and 15(3).

(2) Where evidence is adduced which is sufficient to raise an issue with respect to that defence, the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

18 Offences by bodies corporate and Scottish partnerships

(1) If an offence under any provision of this Act committed by a body corporate is proved-

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1) "officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) If an offence under any provision of this Act committed by a partnership in Scotland is proved-

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In subsection (4) "partner" includes a person purporting to act as a partner.

19 Regulations

(1) Powers to make regulations and orders under this Act are exercisable by statutory instrument.

(2) Regulations, and orders under section 7, may make-

(a) different provision for different cases or circumstances, and

(b) any supplementary, consequential or transitional provision which the appropriate Minister (or the Secretary of State) considers necessary or desirable.

(3) No statutory instrument containing an order under section 7 or regulations under section 9 or 11 is to be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

(4) No statutory instrument containing regulations under section 8 is to be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament, or laid before the Scottish Parliament and approved by a resolution of that Parliament.

(5) A statutory instrument containing regulations under any other provision of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament or of the Scottish Parliament.

20 Transitional provisions: sponsorship

(1) The appropriate Minister may make regulations providing that, subject to the satisfaction (or continuing satisfaction) of any conditions specified in the regulations, section 10 is not to apply before a date so specified to a sponsorship agreement of a description so specified.

(2) The date specified may not be later than 1st October 2006.

(3) If, by virtue of regulations under this section, section 10 does not apply to a sponsorship agreement, the doing of anything as a result of that agreement is not an offence under any provision of this Act.

21 Interpretation

In this Act-

"appropriate Minister" means-

(a) in relation to England, Wales and Northern Ireland, the

Secretary of State, and

(b) in relation to Scotland, the Scottish Ministers,

"public" means the public generally, any section of the public or individually selected members of the public,

"purpose" includes one of a number of purposes, and

"tobacco advertisement" and "tobacco product" have the meaning given in section 1,

and references to publishing include any means of publishing (and include, in particular, publishing by any electronic means, for example by means of the internet).

22 Commencement, short title and extent

(1) Apart from this section, this Act comes into force on such day as the appropriate Minister may by order appoint.

(2) Different days may be appointed under subsection (1) for different provisions and for different purposes.

(3) Such an order may include such transitional provisions and savings as the appropriate Minister considers appropriate.

(4) This Act may be cited as the Tobacco Advertising and Promotion Act 2002.

(5) This Act extends to Northern Ireland.

Explanatory Note

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Statutory Instrument 2004 No. 765

The Tobacco Advertising and Promotion (Point of Sale) Regulations 2004

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STATUTORY INSTRUMENTS

2004 No. 765

PUBLIC HEALTH, ENGLAND AND WALES

PUBLIC HEALTH, NORTHERN IRELAND

The Tobacco Advertising and Promotion (Point of Sale) Regulations 2004

Made	*16th March 2004*
Laid before Parliament	*18th March 2004*
Coming into force	*21st December 2004*

The Secretary of State, in exercise of the powers conferred by sections 4(3) and (4) and 19(2) of the Tobacco Advertising and Promotion Act 2002[1], and of all other powers enabling him in that behalf, hereby makes the following Regulations: -

Citation, commencement and application

1. - (1) These Regulations may be cited as the Tobacco Advertising and Promotion (Point of Sale) Regulations 2004 and shall come into force on 21st December 2004.

(2) These Regulations apply to England, Wales and Northern Ireland.

Interpretation

2. In these Regulations: -

"A5 size" means the size of an area of any shape which is equal to the area of size A5 in the A series of paper sizes defined in BS EN ISO 216: 2001[2]

"the Act" means the Tobacco Advertising and Promotion Act 2002;

"advertisement" means a tobacco advertisement, except an advertisement which is not for cigarettes or hand-rolling tobacco which is in, or fixed to the outside of the premises of, a specialist tobacconist;

"gantry or display unit" means a gantry, display cabinet, tray or other product in which a tobacco product is held pending sale that is -

(a) fixed to one place within fixed or movable premises and

(b) primarily used for the display of tobacco products to customers;

"group of companies" means a holding company and its subsidiaries within the meaning of section 736 (interpretation) of the Companies Act 1985[3] or, as regards Northern Ireland, Article 4 (introductory and interpretation) of Part I of the Companies (Northern Ireland) Order 1986[4];

"other feature" means a logo, trademark, symbol, motto, print, type-face, colour or pattern of colour, picture, artwork, imagery, appearance, message or other indication that constitutes all or part of the recognisable identity of a product;

"point of sale" has the meaning given to it in regulation 3.

Point of sale

3. - (1) In these Regulations "point of sale" means a point within any fixed or movable premises at which a gantry or display unit is affixed.

(2) Except where regulation 5 applies, these Regulations apply only to advertisements published at the point of sale and not elsewhere.

(3) Subject to paragraph (4), where there is more than one point of sale within any premises, tobacco products may be advertised at only one of those points of sale.

(4) Where premises are occupied by more than one separate business, tobacco products may be advertised at only one point of sale within the part of the premises occupied by each of those businesses.

(5) For the purposes of paragraph (4), "separate business" means a business which is -

(a) controlled and managed by a single individual who, or by a firm, company or group of companies which, controls and manages only one business which sells tobacco products in the premises in question;

(b) managed separately from any other business in those premises which sells tobacco products; and

(c) carried on in a distinct part of the premises which is separate from any other part of the premises in which tobacco products are sold.

(6) "Place" in section 4(3)(a) of the Act means -

(a) the point of sale; and

(b) the place where a tobacco vending machine is located.

Advertising at point of sale

4. - (1) Subject to regulations 3 and 6 and the following paragraphs of this regulation, no offence is committed under section 2 of the Act by the publication on a gantry or display unit at a point of sale of an advertisement to which this regulation applies.

(2) An advertisement to which this regulation applies may include -

(a) the name, emblem or other feature (in any combination) of the tobacco product to which the advertisement relates;

(b) the price of a packet of that product and the size of the packet to which the price relates,

but shall not include any other word or image.

(3) An advertisement to which this regulation applies shall be presented in two dimensional format and shall be either -

(a) a single advertisement which has; or

(b) two or more advertisements which together have,

a surface area which does not exceed A5 size.

(4) An advertisement to which this regulation applies shall include an area which is not less than 30% of the total surface area of the advertisement in which is displayed, in accordance with the requirements specified in paragraph (5), parallel to the floor the health warning "Smoking kills" or the health warning "Smoking seriously harms you and others around you" and the following information -

" NHS Smoking Helpline 0800 169 0 169".

(5) The health warning and information which is required to be published by paragraph (4) shall be -

(a) indelible;

(b) legible;

(c) printed in black Helvetica bold type on a white background;

(d) in a font size consistent throughout the text which ensures that the text occupies the greatest possible proportion of the area specified for the warning and information;

(e) in upper case and lower case type as set out in paragraph (4);

(f) centred in the area in which the text is required to be printed;

(g) surrounded by a black border outside the area specified for the health warning and information, which shall be not less than 3 millimetres and not more than 4 millimetres in width, which does not interfere with the text of the warning or information; and

(h) irremovably printed on the advertisement.

(6) This regulation does not apply to advertisements, published at the same point of sale at the same time, which have a surface area which in total exceeds A5 size.

Advertising on tobacco vending machines

5. - (1) Subject to the following paragraphs of this regulation, no offence is committed under section 2 of the Act by the publication of an advertisement on a vending machine from which only tobacco products are sold.

(2) This regulation applies where the only features used on the vending machine to promote a tobacco product are contained in an advertisement which -

(a) consists only of a picture of the packet of a tobacco product which is for sale from that vending machine;

(b) is no larger than the surface area of the largest face of the packet of the tobacco product depicted; and

(c) includes a health warning which -

(i) is identical to a health warning which is required by regulation 7 (warnings on tobacco products) of the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002[5] to be shown on the most visible surface of the tobacco product which is depicted in the picture;

(ii) occupies not less than 30% of the surface area of the advertisement, and

(iii) is surrounded by a black border, not less than 3 millimetres nor more than 4 millimetres in width, which is outside the area occupied by the warning and which does not interfere with the text of the warning.

(3) If more than one different tobacco product is for sale from a vending machine, a picture of the packet of some or each of those products which complies with paragraph (2) may be published.

(4) In this regulation "vending machine" means a tobacco vending machine which contains tobacco products which are not visible prior to purchase.

General provisions

6. - (1) The provisions of these Regulations which provide that no offence is committed under section 2 of the Act do not apply to an advertisement which -

(a) is displayed electronically on a screen or contains a moving image or a moving background, or an image or background which changes colour or is illuminated by flashing lights; or

(b) is, or is designed or adapted to be, accompanied by any sound or smell.

(2) The provisions of these Regulations which provide that no offence is committed under section 2 of the Act apply only to advertisements which remain fixed in a static position.

(3) Where by virtue of any provision of these Regulations a person does not commit an offence under section 2 of the Act by the publication of an advertisement in a place, no offence is committed by any person who -

(a) causes that advertisement to be published in that place; or

(b) prints, devises or distributes that advertisement for use in that place or causes it to be so printed, devised or distributed.

Signed by authority of the Secretary of State for Health

Melanie Johnson
Parliamentary Under Secretary of State, Department of Health

16th March 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide that no offence is committed under section 2 (prohibition of tobacco advertising) of the Tobacco Advertising and Promotion Act 2002 ("the Act") in relation to certain tobacco advertisements which are published at places where tobacco products are sold. They apply to England, Wales and Northern Ireland.

Regulation 3 defines the meaning of "point of sale" for the purposes of the Regulations and "place" for the purposes of section 4(3)(a) of the Act.

Regulation 4 restricts the size, format and content of tobacco advertisements which may be published at a point of sale.

Regulation 5 restricts the size, format and content of tobacco advertisements which may be published on certain tobacco vending machines.

Regulation 6 imposes general restrictions on the tobacco advertisements which may be published under these Regulations and provides that where the publication of a tobacco advertisement is not an offence by virtue of these Regulations, no offence is committed by a person who -

causes the publication;

prints, devises or distributes the advertisement; or

causes it to be printed, devised or distributed.

A draft of these Regulations has been notified to the European Commission as a technical standard, pursuant to Directive 98/34/EC of the European Parliament and of the Council (OJ No. L204, 21.7.98, p.37) laying down a procedure for the provision of information in the field of technical standards and regulations, as amended.

A Regulatory Impact Assessment has been prepared for these Regulations and a copy has been placed in the library of each House of Parliament. Copies of the Regulatory Impact Assessment are published on the Department of Health's website (www.dh.gov.uk) and can be obtained from Room 708, Department of Health, Wellington House, 133-155 Waterloo Road, London SE1 8UG.

Notes:

[1] 2002 c. 36. The powers are exercisable by the appropriate Minister, who is defined in section 21 (interpretation), in relation to England, Wales and Northern Ireland, as the Secretary of State.back

[2] Copies of BS EN ISO 216: 2001 can be obtained from the British Standards Institute, 389 Chiswick High Road, London W4 4AL.back

[3] 1985 c. 6. Section 736 was substituted by the Companies Act 1989 (c. 40), section 144.back

[4] S.I. 1986/1032 (N.I. 6). Article 4 was substituted by the Companies (Northern Ireland) Order 1990, S.I. 1990/1504 (N.I. 10), Article 62.back

[5] S.I. 2002/3041.back

ISBN 0 11 048921 7

Canadian Cancer Society, "Compilation of Selected Evidence Regarding the Impact of Higher Tobacco Prices on Tobacco Use; A Submission Prepared for the House of Commons Standing Committee on Finance"

Société canadienne du cancer, « Compilation de divers documents traitant des effets de l'augmentation des prix des produits de tabac sur l'usage du tabac; Mémoire présenté au Comité permanent des finances, Chambre des communes »

September 2001
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Summary/Sommaire

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1. Introduction

2. Summary/Sommaire

3. Namgyal Goff, "Summary Listing of Estimates of Price Elasticity of Demand" September 2000.

Reports / Rapports

4. By and large, demand for tobacco responds to price changes like any other commodity – when prices rise, consumption falls. Younger smokers are the most price-sensitive, because they typically have little money. Raising prices by raising taxes can prevent children and youth from smoking, or reduce the amount they smoke. One analysis of Canadian data estimated that a 10 per cent increase in the price of cigarettes over and above inflation would likely result in a 17 per cent drop in cigarettes consumed per capita by 15-19-year-olds.

   Thus, tax cuts are a major step backward for public health. To reduce smoking, federal and provincial taxes should be raised to their former peak levels, and increased regularly at or above the inflation rate. (p.4)

   Addiction Research Foundation. "Preventing Smoking: Tobacco Control Policies. Best Advice From the Research Foundation" July 1995.

5. The question of whether tobacco price increases affect younger people more than adults has not been addressed in many studies. In order to gain some insight into the price sensitivity of younger Canadians, a simple analysis was carried out to determine how the proportion of smokers among teenagers and adults is affected by the real price of tobacco. In all cases, the results showed that younger Canadians are, indeed, more sensitive to price changes than adults. That is, recent tax increases have led to a reduction in the number of teenagers who start to smoke and this will have a long-term effect on total tobacco consumption. (p.iv).

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Conclusion

. . . On balance, federal tax increases since 1985 have resulted in a net decline in overall tobacco consumption in Canada. (p.vi)

Canadian Department of Finance. "Tobacco Taxes and Consumption" Ottawa. Department of Finance. June 1993.

6. The Committee recommends such further increases to the excise tax on cigarettes as circumstances related to smuggling will permit. An increase of $1 per carton (0.5 cents per cigarette) across all regions of Canada would increase government revenues by $150 million annually. Such a tax increase would likely reduce tobacco consumption. Recent surveys show that prevalence of smoking has increased in Canada.

In addition, the Committee recommends that the government, subject to smuggling considerations, consider tax measures to equalize federal tobacco taxes as much as possible across all provinces and territories. Under the current regime, the tax level varies from $6.45 per 200 cigarettes to $10.85 per 200 cigarettes, depending upon the province of residence.

Subject again to smuggling considerations, the government should also consider introducing tax increases on "roll-your-own" tobacco (fine cut and tobacco sticks for example) to a level closer to the tax on manufactured cigarettes.

Finally, the Committee recommends that the surtax on the tobacco industry and the export tax on tobacco products be maintained. (p.21)

Canadian House of Commons Standing Committee on Finance. "The Next Steps to Fiscal Health After a Year of Historic Progress: Building the 1996 Budget through Consultation" Twenty-Fourth Report of the Standing Committee on Finance. January 1996.

7. In its last two reports, the Committee recommended tax increases on tobacco products as quickly as circumstances related to the containment of smuggling would permit. The federal excise tax on cigarettes products was increased in February 1995 and again on November 28 of this year.

RECOMMENDATION

The Committee welcomes these increases and still recommends increasing further the excise tax on cigarettes by as much as circumstances related to smuggling permit. An increase of $1 per carton (0.5 cents per cigarette) across all regions of Canada would increase annual government revenues by $150 million.

. . .

As it did last year, the Committee still recommends that the Government, subject to smuggling considerations, consider tax measures to equalize federal tobacco taxes as much as possible across all provinces and territories. Under the current regime, the tax level varies from $7.15 per 200 cigarettes to $10.85 per 200 cigarettes, depending upon the province of residence.

As recommended last year, the Committee suggests that the Government consider increasing taxes on "roll-your-own" tobacco to a level closer to the tax on manufactured cigarettes.

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Finally, the Committee recommends that the current manufacturers surtax, scheduled to end in March 1997, be extended indefinitely.

Increasing the taxes on tobacco products, while a revenue measure, is primarily to curb smoking, especially among the young for whom price is often the most effective deterrent. (p.27, ch. 3 of internet version)

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Canadian House of Commons Standing Committee on Finance. "The 1997 Budget and Beyond: Finish the Job" Fifth Report of the Standing Committee on Finance. December 1996.
http://www.parl.gc.ca/committees352/fine/reports/05_1996-12/fine-05-cov-e.html

8. In the last three reports, the Committee recommended tax increases on tobacco products as much as possible without increasing smuggling. The last time the federal excise tax on cigarettes was increased was on November 28, 1996.
Almost 29% of young Canadians aged between 15 and 24 are smokers.
Increasing taxes on tobacco products is designed primarily to curb smoking, especially among the young, for whom price is often the most effective deterrent.
RECOMMENDATION
The Committee endorses the government's decision to double the resources of the Tobacco Demand Reduction Strategy. The Committee further recommends that the excise tax on cigarettes be increased. (p.17, c.2 of internet version)

Canadian House of Commons Standing Committee on Finance. "Keeping the Balance: Security and Opportunity for Canadians" Report of the Standing Committee on Finance. December 1997.
http://www.parl.gc.ca/InfoComDoc/36/1/FINA/Studies/Reports/FINARP02-E.htm

9. Mesures en matière de lutte contre le tabagisme au niveau national
   - Que la taxation soit retenue comme une stratégie centrale en vue du contrôle du tabagisme.
   - Qu'une proportion des revenus engendrés par le prélèvement de cette taxe soit précisée et affectée au financement des activités de prévention du cancer.
   - Que des mesures supplémentaires soient prévues pour contrer les activités contrebande et que des représentations auprès des provinces et des États voisins soient faites afin que des mesures semblables puissent être adoptées. (p.73)

Comité consultatif sur le cancer. « Programme québécois de lutte contre le cancer; Pour lutter efficacement contre le cancer, formons équipe » Octobre 1997.

10. Increasing the price of cigarettes is essential to reducing and preventing smoking among young people, and is supported by several decades of research. Young people are much more price-sensitive than adults, that is, for a given price increase, they are much more likely to quit or not take up smoking, or to reduce their consumption. (p.15)

Expert Panel on the Renewal of the Ontario Tobacco Strategy. "Actions Will Speak Louder than Words: Getting Serious about Tobacco Control in Ontario. A Report to the Minister of Health from her Expert Panel on the Renewal of the Ontario Tobacco Strategy" February 1999.

11. "The Government of Canada and public health advocates believe that this rise (in youth smoking rates) is due, in large part, to the roll-back on cigarette taxes which was forced on

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us by the rise in smuggling in the 1990's." - Health Minister Allan Rock

. . .

Increasing tobacco taxes-

Tax increases on tobacco products are a key part of the Government of Canada's overall strategy to reduce tobacco consumption. It is widely recognized that raising the price of tobacco products contributes to reducing demand, especially among young people. (p.10)

Health Canada, Health Promotions and Programs Branch, Bureau of Tobacco Control. "Report on Tobacco Control" Ottawa, Ontario., January 2000.

12. The Committee considers that what is required is a National Anti-Smoking Strategy which includes the following: --

. . .

Annual increases in tobacco taxes in excess of cost of living increases. (p.2 of ch.8 of internet version) (p.2 of internet version)

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Action required:

It is the view of the Committee that tobacco taxes should be increased by 5% per annum in excess of inflation in each of the budgets from December 1999 to December 2005 when the impact of increased tobacco taxes should be reviewed. (p.15 of ch.8 of internet version)

Ireland Oireachtas [Parliament], Joint Committee on Health and Children, "A National Anti-Smoking Strategy: A Report on Health and Smoking" November 1999. http://www.irlgov.ie/committees-99/c-health/reports.htm Accessed March 27, 2001.

13. Conclusions and Recommendations

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Evidence from Canada, New Zealand and the United Kingdom lead the Committee to the conclusion that pricing policy is perhaps the single most important element of an overall comprehensive strategy to reduce tobacco use, and particularly to reduce use among children and youths. This evidence leads the Committee to make the following five recommendations for changing how tobacco products are taxed in the United States:

1. Tobacco tax policies at the federal and state levels should be linked to the national objectives for reducing tobacco use. In other words, government policymakers should use tobacco taxes as an intervention to accomplish these health goals. (p.192)
2. The excise tax on cigarettes should be increased to a level comparable with that in other major industrialized countries. A reasonable target would be to increase the federal cigarette tax by $2 by 1995. . . .
3. All tobacco products should be taxed on an equivalent basis. For example, when cigarette taxes are increased, taxes on non-cigarette tobacco products should also be increased on an equivalent basis to discourage substitution of one harmful form of tobacco for another (such as smokeless tobacco).
4. The real value of tobacco taxes should be maintained to account for inflation over time. Optimally, tobacco tax policy should take into consideration the affordability of tobacco products to prevent tobacco from becoming more affordable.
5. Tobacco products in U.S. military stores should be priced at the same rate that exists in the surrounding community. (p.193)

Lynch, B.S., Bonnie, R.J., eds., Committee on Preventing Nicotine Addiction in Children and Youths, Institute of Medicine [U.S.] *Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths*. (Washington, D.C.:

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National Academy Press, 1994).

14. Expert Panel Conclusions

1. Increases in Tobacco Excise Taxes Will Decrease Tobacco Consumption by Youth and Adults.

As with almost all other products, the demand for cigarettes decreases as price is increased. A variety of studies have examined the relationship of cigarette prices to consumption and have documented an inverse relationship. The price elasticity of demand for cigarettes has usually been found to be in the range of 0.3 to 0.5 (minus signs deleted here and throughout this report). Defined simply, price elasticity refers to the percentage change in the quantity of cigarettes demanded divided by the percentage change in price. For example, a price elasticity of 0.4 indicates that, when the price of cigarettes is increased by 10 percent, the quantity of cigarettes demanded will fall by about 4 percent (again, recall that the minus sign is being suppressed here). (p.6)

When the price of cigarettes increases, decreases in consumption occur, both because some people choose not to smoke and because some smokers choose to smoke fewer cigarettes. Approximately two-thirds of the decrease in consumption is estimated to be the result of people choosing not to smoke at all. This refers both to current smokers who choose to stop and to non-smokers (especially children) who choose not to start smoking. The Coalition on Smoking OR Health has calculated that an increase of $2 per pack in cigarette taxes, tied thereafter to inflation, will result in 7.6 million fewer smokers; this, in turn, ultimately will prevent 1.9 million premature deaths. (p.7)

2. An Excise Tax Increase Reduces Tobacco Consumption by Children and Teenagers at Least as Much as It Reduces Consumption by Adults.

. . .

3. Raising the Excise Tax on Cigarettes Deters Smoking in Lower Income Populations, Who Currently Are Most Harmed by Smoking.

. . .

4. The Price Elasticity of Demand for Large Price Increases is Expected to Be at Least as Large as for Small Price Increases.

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5. To Maintain the Public Health Effect of the Tobacco Excise Tax, It Must Be Increased Regularly.

. . .

6. A Substantial Increase in Tobacco Excise Taxes May Be the Single Most Effective Measure for Decreasing Tobacco Consumption"

Manley M., Glynn T.J., Shopland, D. "The Impact of Cigarette Excise Taxes on Smoking Among Children and Adults, Summary Report of a National Cancer Institute Expert Panel" National Cancer Institute [U.S.]. August 1993.

15. In recent years, there has been an increasing trend at the state level to impose taxes on tobacco products other than cigarettes. In 1970, 21 states taxed cigars and the number remained virtually constant up until 1995 (22 states). However, by 1990, the number of states rose to 33 and by 1996 was 41 states. (p.228)

National Cancer Institute [U.S.], *Cigars: Health Effects and Trends.* Smoking and Tobacco Control Monograph 9, 1998.

16. RAISE PRICES TO REDUCE USE

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The price of tobacco products must be increased substantially.

Raising the prices of tobacco products is a proven way of reducing tobacco use in the short and medium terms. Price hikes both encourage cessation and thwart initiation. Higher prices have the added benefit of reducing use among people not yet addicted to nicotine, including young people, whose level of tobacco consumption may be more sensitive to price. (p.4)

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The single most direct and reliable method for reducing consumption is to increase the price of tobacco products, thus encouraging the cessation and reducing the level of initiation of tobacco use. (p.26)

National Cancer Policy Board [U.S.] *Taking Action to Reduce Tobacco Use.* (Washington, D.C.: National Academy Press, 1998).

17. Given the proven efficacy of taxation as a tobacco control strategy, the Task Force is very concerned about the recent reductions in tobaccco taxation at both the federal and provincial levels. . . . (pp.12-13)

The Task Force is especially concerned about the impact of the recent tax policy changes on children and youth, whose buying habits are far more price-senstive than adult. . . . (p.13)

Decreases in the price of tobacco products may also deter adult smokers from quitting. In particular, the recent tax reductions may have a significant impact on the cessation efforts of low-income smokers, who are more sensitive to cost than the general population. The most reliable projections of the impact of tobacco tax reductions point to an increase in the proportion of smokers in the population.

To minimize increases in tobacco-related cancer mortality arising from the reductions on tobacco taxes, the Task Force strongly urges the Ontario government to work with its federal and provincial counterparts to restore tobacco taxation rates to their former peak levels. Subsequent tobacco tax increases should be set above the rate of inflation. (p.13)

Ontario Task Force on the Primary Prevention of Cancer, "Recommendations for the Primary Prevention of Cancer; Report of the Ontario Task Force on the Primary Prevention of Cancer" March 1995 [Report to Ontario Minister of Health].

18. New Zealand studies all show that price rises decrease sales, the effect of a 10 percent price rise being to lower sales by 0.7 to 5 percent, and in New Zealand supermarkets by 4 percent, falling within a week to the new level in 60 supermarkets monitored weekly on electronic checkout data. In the United Kingdom tobacco tax particularly reduces smoking among the lowest social classes and among women. (p.3)

Public Health Commission [New Zealand]. Tobacco Taxation as a Health Issue: Discussion Document. Wellington, New Zealand. March 1995.

19. Tobacco use is strongly influenced by the cost of the product. This is particularly true among young people. Typically teenagers do not have much money, so the higher the price, the less tobacco they can afford. Also, because many teenagers are only experimenting with tobacco and are not yet addicted, they can easily cut down if the price rises. Adult smoking rates change with price too, but usually to a lesser extent than rates for young people. (p.10)

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Recommendations (p.12)

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FEDERAL GOVERNMENT

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1. Put the taxes back on cigarettes.

Price is a very important determinant of smoking behaviour, especially among young people. Raising taxes is the best way of using pricing to discourage tobacco use. (p.14)

Schabas, R. "Tobacco. Sounding the Alarm. Report of the Chief Medical Officer of Health." Ontario Ministry of Health. 1996.

20. Conclusions

3.9 Price, advertising and promotion influence cigarette consumption.

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Recommendations

3.11 The real price of tobacco products should continue to be increased each year to reduce consumption. (p.31)

Scientific Committee on Tobacco and Health [U.K.] *Report of the Scientific Committee on Tobacco and Health.* (London: H.M.S.O., February 1998).

21. Recommendation 4:

Increases in Tobacco Taxation

It is recommended that the Government of Ontario take action to ensure that the retail price of cigarettes be doubled within a 12-month period by means of three phased increases in basic taxation on tobacco products, and ensure through taxation that the price of cigarettes keeps up with inflation thereafter.

It has been well documented that cigarette consumption goes down when the price of cigarettes relative to inflation goes up, and vice versa. (p.13)

Task Force on Smoking. "Smoking and Health in Ontario: A Need for Balance. Report of the Task Force on Smoking Submitted to the Ontario Council of Health." May 1982.

22. While success in reducing smoking depends on a range of inter-related factors, raising the price of tobacco is one of the most effective ways of reducing consumption. Studies show that a price increase of 10 per cent generally leads to a drop of between 3 per cent and 6 per cent in tobacco consumption. Since levels of taxation can be used to raise prices, or to keep them high, taxation is an important part of any effective strategy to reduce smoking. (p.2)

United Kingdom Department of Health. "The Importance of Price in Reducing Tobacco Consumption" London, United Kingdom. September 1994.

23. Tax

Why action is needed

2.12 Research shows that the demand for tobacco products is related to their price. As price rises, demand falls. So high tax levels are one important means of reducing tobacco consumption. High tobacco prices are also a deterrent to children tempted to take up smoking. The real price of tobacco – that is, after allowing for inflation – has increased significantly in recent decades. But people's real incomes have also risen.

2.13 When people's incomes increase faster than the price of cigarettes, people can afford to buy more cigarettes – that is, the 'affordability' of cigarettes goes up. This can reduce the incentive to give up smoking presented by rising tobacco tax. (p.16)

United Kingdom Department of Health, "Smoking Kills: A White Paper on Tobacco" December, 1998.

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24. Considerable research supports the proposition that increasing the price of cigarettes would be the most effective way to reduce their use. . . . A 63-cent increase in price would lead to significant reductions in smoking; a larger price increase would be even more effective. (p.3)

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Most analysts agree that higher prices are the single most effective way to discourage consumption of cigarettes. (p.5).

U.S. Congressional Budget Office. "The Proposed Tobacco Settlement: Issues from a Federal Perspective" Washington, D.C., April 1998.

25. Studies demonstrate that increases in the price of cigarettes decrease smoking, particularly by adolescents. It has been estimated that an additional 100,000 or more persons will live to age 65 as a result of the price increases induced by the 1983 doubling of the Federal excise tax on cigarettes. (p.27)

U.S. Department of Health and Human Service. *Reducing the Health Consequences of Smoking: 25 Years of Progress. A Report of the Surgeon General.* U.S. Department of Health and Human Service, Public Health Service, Centres for Disease Control, Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. Rockville, MD. 1989. DHHS Publication No. (CDC) 89-8411.

26. Conclusions

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7. Increases in the price of cigarettes, which are a price-elastic commodity, cause decreases in smoking, particularly among adolescents. Excise taxes may thus be viewed as a public health measure to diminish morbidity and mortality, although the precise impact of taxes on smoking will be influenced by local economic factors. (p.136)

U.S. Department of Health and Human Service. *Smoking and Health in the Americas.* Atlanta, Georgia: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1992. Publication No. (CDC) 92-8419.

27. Conclusions

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Econometric and other studies indicate that increases in the real price of cigarettes significantly reduce cigarette smoking; young people are at least as responsive as adults to such price changes. Maintaining higher real prices of cigarettes depends on further tax increases to offset the effects of inflation. (p.275)

U.S. Department of Health and Human Service. *Preventing Tobacco Use Among Young People: A Report of the Surgeon General.* Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1994.

28. Numerous efforts have been made to reduce the use of cigarettes through excise and sales

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taxes. Because these taxes increase the price of cigarettes, higher tax rates generally curb the demand for cigarettes, and ultimately, tobacco consumption.

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The actual effects of excise tax initiatives on members of racial/ethnic minority groups are difficult to ascertain. Nevertheless, reductions in the consumption of tobacco products resulting from increases in excise taxes should ultimately benefit members of U.S. racial/ethnic groups by lowering their prevalence of cigarette smoking and by limiting or lowering their exposure to ETS. (p.292)

U.S. Department of Health and Human Service. *Tobacco Use Among U.S. Racial/Ethnic Minority Groups – African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, Hispanics. A Report of the Surgeon General.* Atlanta, Georgia: US. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1998.

29. A few general conclusions can be drawn from these studies of the effects of cigarette prices on smoking. First, increases in cigarette prices lead to significant reductions in cigarette smoking; most studies, using a wide variety of data and methods with various strengths and weakness, predict that a 10-percent increase in price will reduce overall cigarette consumption by 3-5 percent. Second, the effects of increases in cigarette prices are not limited to reductions in average cigarette consumption among smokers but include significant reductions in smoking prevalence. These effects on smoking prevalence constitute both an increase in smoking cessation among smokers and a reduction in smoking initiation among potential young smokers. Third, although evidence concerning the effects of prices on adolescent smoking is mixed, the majority of the evidence from recent studies indicates that adolescents and young adults are significantly more responsive than adults to changes in cigarette prices. Most recent studies found that adolescents and young adults were two to three times more sensitive than adults to price. Ongoing research, particularly that based on longitudinal data, will help clarify this issue. Finally, the limited number of studies of smokeless tobacco use suggest that increases in smokeless tobacco price would reduce the prevalence of smokeless tobacco use. (p.337)

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Conclusions

1. The price of tobacco has an important influence on the demand for tobacco products, particularly among young people.
2. Substantial increases in the excise taxes on cigarettes would have a considerable impact on the prevalence of smoking and, in the long term, reduce the adverse health effects caused by tobacco. (p. 359)

U.S. Department of Health and Human Services. *Reducing Tobacco Use: A Report of the Surgeon General.* Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2000.

30. Cigarette price is a major determinant of cigarette consumption and one that can be influenced by tobacco tax policy. (p.594)

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The effect of pricing on cigarette consumption is likely to be greatest among those with

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fewer economic resources, including adolescents and persons with low income. Several studies have found that cigarette pricing has larger effects among young people than among adults and that pricing changes are more likely to affect adolescents' decisions to smoke than the amount they smoke. Other investigators have reported that smokers of low SES [socioeconomic status] are especially responsive to price changes. (pp.594-595)

U.S. Department of Health and Human Services. *Women and Smoking: A Report of the Surgeon General.* Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2001.

31. Estimates of the elasticity of demand for cigarettes, a measure of price sensitivity, are commonly reported to be in the vicinity of –0.4. A demand elasticity of –0.4 indicates that a 1 percent increase in the price of cigarettes will be associated with at 0.4 percent decrease in the number of cigarettes sold. The –0.4 adult demand elasticity estimate is consistent with estimates derived from a variety of studies. Studies of per capita consumption report elasticity estimates in the range of –0.2 to –0.8. This figure also represents the midpoint of the consensus range of elasticity estimates arrived at by a gathering of economists and other experts convened by the National Cancer Institute (-0.3 to –0.5). Other studies allow for the possibility that smokers consider the future costs of developing a smoking habit when making current decisions to buy cigarettes. Studies based on this approach generally imply price elasticities that are higher over a relatively long period because consumer response to a permanent increase in the price of cigarettes grows over time, until it reaches a final equilibrium. These models, nonetheless, still find that demand is inelastic even in the long run. Applying this future-cost approach to state data, one study reports a short run price elasticity of –0.45 and a long run estimate of -0.75. (p.4-5)

U.S. Federal Trade Commission, Bureaus of Economics, Competition, and Consumer Protection. "Competition and the Financial Impact of the Proposed Tobacco Industry Settlement" Requested by the Congressional Task Force on Tobacco and Health. September 1997.

32. Our assessment of the economic literature supports the prediction that increasing the federal excise tax on cigarettes should reduce the number of teenage smokers significantly. Although the size of the reduction is uncertain, we believe that a reasonable estimate can be made. If, for example, excise taxes were raised by about 20 cents per pack in 1989, all other factors remaining unchanged, the likely result would be over 500,000 fewer smokers. This would lead, according to one estimate, to about 125,000 fewer premature deaths. (p.1)

U.S. General Accounting Office. "Teenage Smoking: Higher Excise Tax Should Significantly Reduce the Number of Smokers. Report to the Honorable Michael A. Andrews, House of Representatives" Washington, D.C. 1989. Publication No. GAO/HRD-89-119.

33. In reality, the most effective way to deter children from taking up smoking is to increase taxes on tobacco. High prices prevent some children and adolescents from starting and encourage those who already smoke to reduce their consumption.(p.5)

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Evidence from countries of all income levels shows that price increases on cigarettes are highly effective in reducing demand. Higher taxes induce some smokers to quit and prevent

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other individuals from starting. They also reduce the number of ex-smokers who return to cigarettes and reduce consumption among continuing smokers. On average, a price rise of 10 percent on a pack of cigarettes would be expected to reduce demand for cigarettes about 4 percent in high-income countries and by about 8 percent in low-and middle- income countries, where lower incomes tend to make people more responsive to price changes. Children and adolescents are more responsive to price rises than older adults, so this intervention would have a significant impact on them. (p.6)

World Bank. *Curbing the Epidemic: Governments and the Economics of Tobacco Control.* (Washington, D.C.: World Bank, 1999).

34. Financial measures to discourage tobacco consumption

A number of studies in several countries have shown that, for every 10% increase in the price of tobacco products, consumption can be expected to decline by 2-8%. Price has been found to have an even stronger effect in reducing tobacco consumption among two key target groups- adolescents and people of lower socio-economic status. While the size of the effect may vary, it has been clearly demonstrated that raising the price of tobacco products does reduce tobacco consumption. Therefore, regular increases in the price of tobacco products are of critical importance in a comprehensive tobacco control strategy. (p.55)

World Health Organization, *Tobacco or Health: A Global Status Report.* (Geneva: World Health Organization, 1997).

Conference Proceedings / Conférence

35. Tobacco Taxation

All African countries should examine the pricing of tobacco products to determine whether the price of tobacco has kept pace with the rate of inflation and, if not, that the tax on tobacco is adjusted to reduce affordability of tobacco products. (p.176)

All-Africa Conference on Tobacco or Health, "Final Conference Recommendations for Tobacco Control in Africa" In: Yach, D., Harrison, S., eds., *Proceedings of the All-Africa Conference on Tobacco or Health*, Harare, Zimbabwe, 14-17 November 1993.

36. Ten strategies for a smoke-free Europe

. . .

7 Institute progressive financial disincentives (p.14)

First European Conference on Tobacco Policy, "It Can Be Done: A Smoke-free Europe; Report of the First European Conference on Tobacco Policy" Madrid, Spain, 7-11 November 1988. WHO Regional Publications, European Series, No. 30.

37. Conclusions of the conference (p.iii)

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Increase the Federal excise tax on cigarettes by two dollars per pack

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. . . it was estimated that a $2 tax increase will save 2 million lives over time. The tax would deter youth from starting to smoke, perhaps more effectively than any other single health

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promotion tactic. Adults would also have an increased incentive to quit smoking. (p.iv)

Houston, T., ed. "Tobacco Use: An American Crisis. Final Conference Report and Recommendations From America's Health Community" Washington, D.C., 9-12 January 1993 (Chicago: American Medical Association, 1993).

38. In order to help achieve its goal of eliminating lung cancer, the IASLC: 1. Requests governments to: . . . 4) Increase taxes on tobacco in order to prevent its use.

Ninth World Conference on Lung Cancer, "IASLC 2000 Tokyo Declaration on Tobacco", [International Association for the Study of Lung Cancer] Tokyo, Japan, 2000.

39. This conference resolves that:

1. All nations implement the International Strategy for Tobacco Control

. . .

4. This conference further resolves that:

a. Duty-free sales of tobacco products be prohibited. (p.1017)

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AN INTERNATIONAL STRATEGY FOR TOBACCO CONTROL

Since measures to deal with the tobacco problem must be comprehensive and long term, the following individual actions should form the basis of such a strategy.

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4. Economic policies to discourage production and use of all tobacco products, including: progressive significant increases in taxation above inflation (and the growth of disposable income), and the allocation of a specific proportion of such taxes for tobacco control purposes; (p.1018)

Ninth World Conference on Tobacco and Health, "Resolutions of the Ninth World Conference on Tobacco and Health" In: Slama, K. ed. *Tobacco and Health: Proceedings from the 9th World Conference on Tobacco and Health.* (New York: Plenum Press, 1995), pp.1017-1018.

40. The Regional Committee,

. . .

2. URGES Members States

(b) to adopt and strengthen policies which will reduce tobacco consumption, particularly among children, women and the poor, including, . . . increasing taxes on tobacco products; (p.14)

Regional Committee, Southeast Asia Region. "Resolution" In: "Tobacco or Health: Actions for the 21st Century. Report and Documentation of the Technical Discussions held in Conjunction with the 36th Meeting of CCPDM [Consultative Committee for Programme Development and Management]" Dhaka, September 2, 1999. World Health Organization, Regional Office for South-East Asia. New Delhi. February 2000.

41. The European Union, the European region, Latin America and the other countries represented at this conference call for governments, international organizations, and NGOs to:

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2) Increase the price of all tobacco products by more than the rate of inflation and the rate of increase in incomes; exclude tobacco products from price indices; and dedicate at least one percent of tobacco tax revenues to tobacco control activities.

Second European Conference on Tobacco or Health and First Iberoamerican Conference on Tobacco or Health, "Canarias Declaration" Las Palmas de Gran Canaria, Spain, 23-27 February 1999.

42. The following resolutions were accepted unanimously by participants in the Conference at the closing session. (p.965)

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TAXATION

1. All countries are to be encouraged to use tobacco tax as an instrument to reduce tobacco consumption as part of a comprehensive tobacco control programme including enhanced health promotional activities and continually increasing tobacco prices.
2. Recognising that the inclusion of tobacco products in cost of living indices is inappropriate, given the uniquely dangerous nature of tobacco and the patterns of its use, it is recommended that all countries remove tobacco from their cost of living calculations. (p.966)

Seventh World Conference on Tobacco and Health. "Conference Resolutions" In: Durston, B., Jamrozik, K., ed. *Tobacco & Health 1990: The Global War. Proceedings of the Seventh World Conference on Tobacco and Health,* 1st-5th April 1990, Perth, Western Australia, Australia. 1990. pp.965-966.

43. Finally, the Conference recognises that the key issues are: (p.239)

. . .

•Increasing tobacco taxation significantly (p.240)

Smokefree Europe: Conference on Tobacco or Health, "Smokefree Europe Conference Resolution on the European Tobacco Strategy" In: Waller, M., Lipponen, S., eds. *Smokefree Europe: A Forum for Networks, Smokefree Europe: Conference on Tobacco or Health,* Helsinki, Finland, 2-4 October 1996, pp.238-240.

44. The Conference recommends:

i. WHO and governments formulate an international framework convention to include protocols for comprehensive tobacco control programmes and the recommendations from previous world conferences, which could be made broader and more restrictive over time; (p.117)

Tenth World Conference on Tobacco or Health, "Resolutions of the Ninth World Conference on Tobacco and Health" Paris, France, 1994. In: Slama, K. *Tobacco Control and Prevention: A Guide for Low Income Countries Tenth World Conference on Tobacco or Health* (Paris: International Union Against Tuberculosis and Lung Disease, 1998), pp.117-120.

Tobacco Industry Documents and Statements

45. In particular, excise taxation determines the level of retail prices, the price structure and

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therefore the overall pattern of smoker demand for our products. (p.1)

. . .

Strategies

This policy will be achieved by focusing upon the following main strategies:

1. Seek to reduce excise taxation, or to ensure that its level does not increase at a rate greater than inflation.
2. To secure smaller and more frequent increases in preference to larger and only occasional increases in excise taxation. (p.2)

. . .

Although a reduction in excise levels is not a realistic objective for most companies, the opportunity to lobby for it should always be considered, particularly if current revenue yields are falling. However, a more realistic objective for most companies is to contain the increase in taxation to a level below the rate of inflation, or at worst in line with it. Arguments supporting this include:

. . .

- the normal economic arguments that tax increases result in falling demand, employment, profitability and investment, both directly upon the company and indirectly upon suppliers.

. . .

- increases in taxation may result in a decline in consumption sufficient to bring a fall in revenue yield to the Government. Because of the inelasticity of demand for cigarettes over the longer term, this result rarely occurs. However, it is not uncommon to see a short term decline in the revenue yield which can be pointed out to Government when opposing increases.

- increases in taxation which reduce consumption may mean the destruction of the vitality of the tobacco industry and thus the erosion of the tax base which the Government may wish to protect over the longer term. (p.3)

Bingham, P.M. (Marketing Department. British American Tobacco Company). "Key Area Paper: Excise Taxation of Tobacco Products" April 1991. Bates No. 303561888-909.

46. The method of taxation applied will always have an effect upon the cigarette industry and the level of taxation raised. It influences the amount collected, the quality of the product, the range and level of retail prices, the overall level of demand, and even the product choices of consumers. (p.1)

. . .

No indirect taxation, including cigarette taxation, is totally neutral. The cigarette market can be shaped to a significant extent by the tax system and structure under which the manufacturer operates. The method of taxation and the tax rates directly affect the product, its quality, price, while consumer demand and export opportunities can also be influenced. (p.18)

. . .

The psychology of smokers is such that it is better, for the maintenance of demand, to present them with a number of small tax/price increases over a period of time, rather than one large increase. (p.19)

British-American Tobacco Company Limited. *Tobacco Taxation Guide: A Guide to Alternative Methods of Taxing Cigarettes and Other Tobacco Products.* December 1994.

47. On a trend basis, excluding price effects, we would expect these new smokers to start in

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1983. However, based on the National Bureau of Economic Research elasticities and an estimated 15.1% increase in the real price of cigarettes during 1983, the number will be lower.

. . .

If these new smokers had averaged only ten cigarettes a day, they would have accounted for 605 million cigarettes in 1983 or about .1% of Industry.

Some of these people may later choose to start smoking. However, for those 17-25, the odds are against it. (p.3)

Burrows, D.S. (R. J. Reynolds Tobacco Co). "Estimated Change in Industry Trend Following Federal Excise Tax Increase" Memorandum to P.E. Galyan. . September 20, 1982.

48. Escalating taxes on tobacco products are affecting our livelihood.

As the price of tobacco products is pushed ever higher by taxes, sales go down. (p.1)

Fennell, P.J. (President & CEO, Rothmans, Benson & Hedges Inc.), Mercier, J.-L. (Chairman & CEO, Imperial Tobacco Limited), Fitzgerald, C.W. (President and CEO, RJR-Macdonald Inc.). Letter to G.E. Morehouse (Morehouse G E Limited), March 14, 1989.

49. The problem with tax increases is that it does decrease consumption, just as desired by the social engineers posing these increases want to see.(p.3)

Ferguson, R.N. and Waugh, M. (Philip Morris), "Social-Political Context of Cigarette Sales and Use in the U.S. – 1987" Memorandum to Strategic Planning Committee. Philip Morris U.S.A. Interoffice Correspondence. May 27, 1987.

50. A negative correlation exists between industry volume and retail price of cigarettes relative to inflation. Higher price relative to inflation could be expected to produce negative effects on industry volume. (p.1)

Frydman, U. (R.J. Reynolds Tobacco Co.). "Re: Analysis of Cigarette Price" Memorandum to R.E. Anderson, W.D. Hobbs, M.V. Hunter. March 13, 1979.

51. Excessive cigarette taxation continued to be the industry's major problem in fiscal 1986. Substantial increases in taxes at both the federal and provincial levels resulted in a further slowing of unit sales. (p.2)

Imasco Ltd., *Annual Report 1986*. 1986.

52. As in past years, changing social attitudes towards smoking and escalating taxes resulted in a decline in industry volume and the continued shrinkage of the industry. (p.8)

. . .

Cigarette taxes increased moderately in 1987. With the exception of Alberta and Nova Scotia, consumers were not faced with the levels of federal and provincial tax increases that characterized previous years. As a result, the tailor-made cigarette industry slowed its rate of decline to 5.3%, with shipments totalling some 52.4 billion cigarettes. (p.10)

Imasco Ltd., *Annual Report 1987 for the nine months ended December 31, 1987.* 1988.

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53. The past year was a difficult one for the tobacco industry in Canada as it strove to overcome the burden of excessive taxation on cigarettes.
Cigarette consumption in Canada has declined in the last five years form 65.5 billion units to 54.7 billion units. (p.6)
...
In January 1987, Imperial Tobacco announced plans to close its Quebec City plant. This plant was opened in 1949 and has a production capacity in excess of eight billion cigarettes a year. This closure is the result of excessive taxation and its negative impact on sales. (p.6)
...
Without further excessive tax increases, the industry should see a slowdown of the decline in sales of cigarettes. (p.8)
Imasco Ltd., *Annual Report 1987*. 1988.

54. The slowdown in the rate of decline was the result of virtually unchanged consumer cigarette prices.
As the year progressed, five provinces increased taxes, the most notable being Ontario where taxes increased by 35%. As a result, industry volume declined further. (p.10)
Imasco Ltd., *Annual Report 1988*. 1989.

55. Canadian cigarette manufacturers were expecting a modest decline in consumption in 1989. However, the April federal budget struck a major blow to industry forecasts. The excise duty on manufactured cigarettes increased by an incredible 161% and on fine cut tobacco, by 654%. Seven provinces also raised tobacco taxes and Canadian smokers faced overall price increases of up to 35% on manufactured cigarettes and 89% on fine cut tobacco. Industry volume of manufactured cigarettes fell 7% to 47.6 billion units and Imperial's volume dropped 4% to 27.5 billion units. (p.8)
Imasco Ltd., *Annual Report 1989*. 1990.

56. The rationale for these taxes is that they discourage smoking while generating substantial government revenues. However, there is no evidence that the policy has had a measurable effect on the incidence of smoking by Canadians and, with smuggling, tax revenues are much less than expected. (p.4)
Imasco Ltd., *Annual Report 1992*. 1993.

57. Sharply higher prices and diminishing social acceptance of smoking have led to smaller percentages of regular smokers in all age/sex cohorts through the 1980s. (p.1)
...
CONCLUSIONS
Even a cursory comparison of price and volume data in the 1980s compared with the 1970s shows that prevalence of cigarette smoking has plunged with the price increases of the 1980s. A large measure of the price jump is due to tax increases, by both federal and provincial governments.
This study has found that average long-run price elasticities for the period 1973-88 are around 0.7, either from the intensity/prevalence route or from using shipments data. Pooling the provincial data gives a long-term price elasticity for this period of about 0.8 (the higher elasticity provinces where population is smaller get equal weight with the more populous

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regions). (p.14)

Jacobsen, P.M., Rodway, P. "Tobacco Demand Elasticity Study," Prepared by Informetrica for Canadian Tobacco Manufacturers' Council. January 17, 1990.

58. But even though Canadian tax hikes caused a dramatic decline in the sale of legal, tax-paid cigarettes because of smuggling, actual cigarette consumption didn't decline. So the government learned a painful lesson – higher taxes did not discourage smoking. But they did encourage crime.

Johnston, J. (Chief Executive Officer, RJ Reynolds Worldwide), "Commit Now" Presentation to Tabexpo 94 Congress. Vienna, Austria. In: *Tobacco Reporter*, December 1994, pp. 44, 46, 48, 50, 52.

59. I have just finished studying a National Bureau of Economic Research (NBER) working paper entitled "The Effect of Government Regulation on Teenage Smoking." . . .This is by far the best study I have read concerning the effects of the anti-smoking commercials, and the only study I know of that attempts to determine the price elasticity of cigarettes among different groups.

Because of the quality of the work, the prestige (and objectivity) of the NBER, and the fact that the excise tax on cigarettes has not changed in nearly 30 years, I think we need to take seriously their statement that ". . .if future reductions in youth smoking are desired, an increase in the Federal excise tax is a potent policy to accomplish this goal." (p.1)

. . .

In any event, and for whatever reason, it is clear that price has a pronounced effect on the smoking prevalence of teenagers, and that the goals of reducing teenage smoking and balancing the budget would both be served by increasing the Federal excise tax on cigarettes. (p.3)

. . .

Given a price elasticity of –0.4 for total cigarette sales and –1.2 for teenage smoking participation, a 25 percent increase in the excise tax could be expected to reduce industry sales to about 1.2 percent below what would be expected in the absence of such an increase, and to reduce the number of teenage smokers to 3.5 to 4.0 percent below the number that would otherwise be expected. (p.4)

Johnston, M., "Teenage Smoking and the Federal Excise Tax on Cigarettes" Memorandum to Harry G. Daniel. Philip Morris U.S.A. Inter-Office Correspondence. September 17, 1981. Bates No.2001255224-227.

60. Thus, price clearly <u>is</u> important. (p.2)

. . .

The effect of a price increase is to cause sales to increase <u>more slowly</u> than would have been the case without a price increase. This means that if the elasticity is –0.42, a ten percent increase in price would cause sales to be 4.2 percent lower than would have been the case if there <u>had not</u> been a price increase.

In a period of relative price stability, a price increase would be followed by an absolute decline in sales, but in a period of sustained inflation, when price increases of one good are masked by the general increase in prices, the effect of a price increase should, theoretically, be relatively transitory. (p.3)

Johnston, M.E., "Still More on the Price Elasticity of Cigarettes" Memorandum

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to H.G. Daniel. Philip Morris U.S.A. Inter-Office Correspondence. March 25, 1982. Bates No.2043565313-328.

61. Price elasticity works in two ways. A price increase can cause a decline in the number of people who use the product or in the amount of the product its users consume. Usually it works both ways. In the case of cigarettes, about three-fourths of the elasticity is accounted for the by smoker participation rate. Thus, if we accept an elasticity of –0.2, an 11 percent price increase would lower the consumption of current smokers by only about 0.6 percent and cause the number of smokers to fall to about 1.7 percent below what it would otherwise have been, both by increasing the number of smokers who quit and decreasing the number of young people who begin to smoke. Many of the quitters would, of course, subsequently resume smoking, but those who are dissuaded from beginning to smoke would probably never become smokers. (p.1)

. . .

As noted, a price increase may also be an added inducement for older smokers, particularly older males, to quit smoking. Since there are more potential quitters than potential starters, the sharpest decline in the number of smokers would be among males over 50. (p.2)

Johnston, M., "The Effect of an Excise Tax Increase on Philip Morris Sales" Memorandum to Harry G. Daniel. Philip Morris U.S.A., Inter-Office Correspondence. July 12, 1982. Bates No.2045259373-374.

62. You may recall from the article I sent you that Jeffery Harris of MIT calculated, on the basis of the Lewit and Coate data, that the 1982-83 round of price increases caused two million adults to quit smoking and prevented 600,00 teenagers from starting to smoke. Those teenagers are now 18-21 years old, and since about 70 percent of 18-21 year-olds and 35 percent of older smokers smoke a PM brand, this means that 700,000 of those adult quitters had been PM smokers and 420,000 of the non-starters would have been PM smokers. Thus, if Harris is right, we were hit disproportionately hard. We don't need to have that happen again. (p.1)

Johnston, M., "Handling an Excise Tax Increase" Memorandum to Jon Zoler. Philip Morris U.S.A. Inter-Office Correspondence. September 3, 1987. Bates No.2058122240-241.

63. The elasticity estimate of 0.60 produced by the standard models using the most recent time series data is somewhat higher than the previous estimates. Based on this estimate, increases in excise taxes would reduce demand more than is typically expected, and therefore not increase revenue as much. (p.4)

KPMG Peat Marwick, Policy Economic Group. "Analysis of Cigarette Price Elasticities", Prepared for the internal use of: Philip Morris, U.S.A. February 1990. Bates No.2044982672-689.

64. The retail price of cigarettes relative to the inflation rate has a strong influence on industry volume. For every 1% increase in the retail price of cigarettes relative to other prices, there is approximately a 0.3% decline in volume. It appears that the June, 1978 price increase of 85 cents/1,000 may have resulted in a loss of approximately 1.75 billion cigarettes in industry volume. (p.2)

McCann, J., "Analysis of Cigarette Price Changes: 1964-1978" Prepared for R.J.

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Reynolds Tobacco Co. March 13, 1979.

65. Cigarette sales in Canada have fallen considerably, from a peak of 66.5 billion units in 1981 to a forecasted level of 47.4 billion units in 1989, with most of this decrease taking place in the last five years. Although lifestyles are changing and the debate on tobacco use and health explains part of this decrease, there is no doubt that taxation of tobacco products is principally responsible. (p.2) [translation]

Neville, W.H. (President, Canadian Tobacco Manufacturers' Council). "Taxation of Tobacco Products" Memorandum to Michael Wilson (Minister of Finance), January 8, 1990; LaRivière, J. (Vice-President, Public Affairs). Letter to Gilles Loiselle (MP), February 1, 1990.

66. The 3 cent a cigarette/$6 a carton increase announced in your budget, together with comparable increases in taxes on other tobacco products, was simply the latest step in an apparent effort to tax an industry out of business and to use tax policy to effectively dictate the personal lifestyle decisions of Canadians. (p.1)

. . .

As for the impact on our industry and related sectors, as we noted in our pre-budget submission to you, the large tax increases imposed by federal and provincial governments in the 1980's were primarily responsible for the loss of 5,000 tobacco-related jobs and the closure of four manufacturing plants. (p.2)

. . .

<u>If you are indeed using tax policy to effectively force Canadians to stop smoking, then you are creating a dangerous precedent and, in our view, abusing the purposes of the tax system.</u> Taken at your word in wanting to discourage Canadians from smoking, you are saying, in effect, that you will use sheer economic power, as represented by your power to tax, to deprive Canadians of their right to choose for themselves whether or not they wish to consume a legal consumer product. . . .

We have never disputed, Mr. Minister, the government's right to express its views on the alleged health risks of smoking and even to encourage Canadians to stop—or not to start—smoking. But that is a far cry from using the tax system to effectively make that lifestyle decision for them by trying to price the product beyond the practical economic reach of those of limited financial means in particular. (p.3)

Neville, W., (President, Canadian Tobacco Manufacturers' Council), Letter to Michael Wilson, Minister of Finance. March 13, 1991.

67. The finance department's second announced objective has been to reduce consumption. Let me make it clear—there is no kidding anyone on this—it works. That is, taxes do impact on consumption . . . (p.3:5)

there is no question that consumption is down measurably over the last five years and there is no question in our minds that taxes have been a significant factor in that. (p.3:6).

Neville, W. (President, Canadian Tobacco Manufacturers' Council), Testimony before the House of Commons Legislative Committee F on Bill C-10, An Act to amend the Excise Tax Act and the Excise Act. September 26, 1991.

68. Our Forecasting Group has determined that younger adult smokers, particularly younger adult male smokers, tend to be very price sensitive. The effect of a price increase on

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younger adult male smokers could be three to four times greater than on smokers in general, in terms of negative impact on volume.

Novak, G. (R. J. Reynolds Tobacco Co.) "Price Elasticity Among Younger Adult Smokers" Memorandum to J.W. Johnston, H.J. Lees. September 20, 1982.

69. In the opinion of PM Inc. and PMI , increases in excise and similar taxes have had an adverse impact on sales of cigarettes. Any future increases, the extent of which cannot be predicted, could result in volume declines for the cigarette industry, including PM Inc. and PMI, and might cause sales to shift from the premium segment to the discount segment. (p.29)

Philip Morris Companies Inc., 10-Q filing with the U.S. Securities Exchange Commission, August 13, 1999.

70. However, they [adult NBER price elasticities] probably give a reasonable idea of the groups most affected by price and the orders of magnitude of the effects... (p.4)
THE TEENAGE MODEL (p.4)
. . .
Large, negative price elasticities were found. (p.5)

R.J. Reynolds Tobacco Co. document, "Attachment A. Importance of Price Impact by Age/Sex to Total Industry" (10/6/82). 1982.

71. The success of the C.T.M.C. in influencing the Federal Government to modify its tobacco taxation policy has been identified as the key factor in arresting the market decline. (p.3)
. . .
The Company will be affected by the volume and profit pressures generated by the continued decline of the market. The industry, by the end of 1984, will have experienced two consecutive years of losses in excess of 5%. This severe decline is attributed to:
a) the depressing effect on consumer demand of the increases in the price of cigarettes, principally because of governmental taxation policies. (p.6)

RJR-Macdonald Inc., "Strategic Business Unit. RJR-Macdonald Inc. Canada. 1985 Operating Plan." September 19, 1984.

72. Punitive levels of taxation on tobacco products continued to proliferate during the fiscal year. More than 6 million Canadian smokers contributed more than $4.1 billion in taxes to various levels of government, up from 1986, in spite of a 5% decrease in sales of manufactured cigarettes. We view excessive tobacco taxes as regressive and unfair, discriminating against those socio-economic groups least able to afford such taxes, jeopardizing jobs and investment in the industry and ultimately leading to declines in the absolute revenues raised by governments. (p.4)

Rothmans Inc. *Annual Report 1988*. 1988.

73. Taxation
In the fiscal year, industry cigarette sales declined 2%. This represents a significant improvement over the previous three years, where the decline has averaged 5% in an environment where tobacco taxes have increased substantially.
. . .

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The government taxation policy is inappropriate because:

. . .

- It is expected to result in a decline in the consumer's ability to afford this legal product, and will serve to cause a further reduction of several thousand jobs associated with the tobacco industry; (p.6)

Rothmans Inc. *Annual Report 1989*. 1989.

74. Since 1982, tax increases at far above the inflation rate have made it increasingly difficult for consumers to afford the enjoyment of our products, resulting in a downward trend in tobacco sales. (p.5)

. . .

The Corporation expects that future earnings performance will be affected by two major factors: declines in the total market caused by continued excessive taxation; and, constraints on reversing negative market share trends due to increasingly stringent government controls over the marketing and sale of tobacco products. (p.7)

Rothmans Inc. *Annual Report 1990*. 1990.

75. The tax-engineered decrease in consumption of tobacco products was partially offset by increased industry selling prices.

. . .

The Corporation continues to expect that future earnings performance may be adversely affected by two major factors: declines in industry volumes caused by continued excessive taxation; and, constraints on market share imposed by increasingly stringent government controls over the marketing and sale of tobacco products. (p.11)

Rothmans Inc. *Annual Report 1991*. 1991.

76. Excessive taxation continues to be a major factor that could adversely affect our operating performance in future years. (p.9)

Rothmans Inc. *Annual Report 1992*. 1992.

77. No credible evidence exists that anti-tobacco initiatives promulgated by the federal and provincial governments have had any material effect on the smoking behaviour of Canadians. (p.3)

Rothmans Inc. *Annual Report 1995*. 1995.

78. The federal and provincial governments may be considering restoring sales and excise taxes imposed on the manufacture and sale of tobacco products to levels similar to those which existed prior to February 1994. . . . Restoring such taxes or imposing additional taxes, levies or fees could adversely affect RBH's sales and operating income. In addition, changes in federal or provincial taxation policies that result in fine cut and pre-portioned tobacco stick products being taxed at higher levels would make those products unattractive to consumers and also have an adverse effect on RBH's sales and operating income. (p.39)

Rothmans Inc. *Annual Report 2000*. 2000.

79. A high cigarette price, more than any other cigarette attribute, has the most dramatic impact

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on the share of the quitting population.

Schwab, C., "Cigarette Attributes and Quitting" Memorandum to John Heironimus. Philip Morris USA Inter-Office Correspondence. April 3, 1993. Bates No.2045447810.

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80. Tobacco taxation has proven to be one of the most effective means of reducing tobacco use. As tobacco becomes more expensive, many users will either quit or cut down. Many children who would have otherwise started smoking will stay out of the market entirely. Estimates made from data compiled in the United States and Canada indicate that for every 10% increase in the price of tobacco, consumption will fall by about 4%. Given the number of smokers and the health consequences of smoking, the relationship between price and consumption demonstrates that tobacco tax increases could prevent tremendous numbers of tobacco-related deaths. (p.1)

Action on Smoking and Health [Canada]. "Tobacco Taxation in Alberta". ASH Position Paper #1. Edmonton, Alberta. April 1993.

81. Recommendation 1

1.1 Excise duty on tobacco should be raised substantially.

. . .

1.2 Rationale

1.2.1 Studies all over the world, and notably in the UK, have shown that increasing the real price of tobacco leads to reduced consumption (see figures 2 and 3). Figure 2 shows that successive UK Governments have increased the real price of cigarettes and this has contributed to a fall in consumption from 127 billion cigarettes in 1979/80 to 88 billion cigarettes in 1992/3. (p.7)

Action on Smoking and Health [U.K.] et al [57 organizations]. "Tobacco Taxation: A Submission to the Chancellor of the Exchequer by Health and Welfare Organizations. November 1994 Budget" 1994.

82. However, since taxes have been raised a lot in recent years [in Venezuela], I believe that factor has had an important influence on the decrease of cigarette consumption. (p.51)

Adrianza, M., "Public Policy Issues," In: *8th World Conference on Tobacco or Health, Building a Tobacco-Free World.* March 30-April 3, 1992. Buenos Aires, Argentina. (American Cancer Society, 1994). pp.51-53.

83. Considerable evidence shows that higher tobacco prices can lead to a drop in consumption – particularly among young people. Now that smuggling is no longer a concern (due to higher tobacco prices in the US), the reasons to support tobacco tax increases are more compelling than ever. (p.1)

Alberta Tobacco Reduction Alliance, "Tobacco Tax Brief" August 2001.

84. Since price increases have been shown to depress the demand for cigarettes, tobacco taxation increases are strongly recommended as a component of a comprehensive smoking control

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program. Especially if the price increases are substantial, the Federal Government could use excise tax rates more as a sumptuary tax. (p.958)

Alchin, T.M. "Future Tobacco Taxation in Australia," In: Slama, K., ed. *Tobacco and Health: Proceedings from the 9th World Conference on Tobacco and Health.* (New York: Plenum Press, 1995), pp.955-58.

85. New Zealand has introduced a comprehensive tobacco control programme, involving a number of initiatives under four categories of intervention: tobacco legislation and enforcement, smoking cessation services, health promotion, and tobacco taxation. However, of all initiatives, tobacco taxation is the one that has been most closely evaluated. A recent tax increase (May 1998), for example, saw national tobacco consumption fall by six percent just about overnight. (p.599)

Allen, M.J., "Tobacco Tax - The New Zealand Experience," In: American Cancer Society, American Medical Association, The Robert Wood Johnson Foundation. *11th World Conference on Tobacco OR Health. Promoting a Future Without Tobacco. Abstracts. Vol. 3.* August, 6-11, 2000. Chicago, Illinois, USA, p.599.

86. Conclusion

This report has reviewed the impact of tobacco control policies on tobacco production and on employment. The report studied the record of the 1980s and possible future scenarios that include a 50% reduction in tobacco consumption as well as retaliatory actions on the part of tobacco manufacturers, like terminating production in Canada and supplying the Canadian market from abroad. Whatever question was investigated, it was found that there were only small losses in jobs linked to tobacco production, particularly when seen in the context of the Canadian economy as a whole.

Moreover, many of these jobs losses met by attrition and retirement rather than layoffs. Furthermore, in most cases, new jobs were created to offset the losses as consumers shifted their spending to non-tobacco products and as governments spent the proceeds of their enlarged tax revenues.

These findings point to one overall conclusion: The choice between "lives" and "jobs" is a false dilemma. Canadians can have a progressive health policy without causing substantial economic dislocation. (p.30)

Allen, R.C. (Professor of Economics, Department of Economics, University of British Columbia). "The False Dilemma: The Impact of Tobacco Control Policies on Employment in Canada" February 1993, and accompanying news release and highlights.

87. Since 1980, Canada has had tremendous success in reducing the consumption of tobacco and thereby saving the lives of thousands of Canadians who would otherwise have died form tobacco related illnesses. Increased taxation of tobacco products has been the central weapon in this fight. High prices have cut consumption of people already addicted to tobacco and, more dramatically, dissuaded thousands of teenagers from starting to smoke. (p.1)

Allen, R.C. (Visiting Professor of Economics, Department of Economics, Harvard University) "The Health and Economic Impact of Tobacco Tax Rollback." Harvard University, Department of Economics. Cambridge, Massachusetts. January 1994.

88. The increase in tobacco use and the resulting increase in premature death is directly attributable to the policy followed by the federal government and certain provincial governments of cutting tobacco taxes to combat smuggling in 1993. These policies lowered the average price of cigarettes (including contraband) in Canada by almost 35%. Teenage cigarette use is very price sensitive. The result of the price decline is a marked increase in the number of smokers. Most of these new cigarette users will become addicted to tobacco and consume cigarettes for the rest of their lives. (p.4)

    Allen, R.C. (Professor of Economics, University of British Columbia) "Rising Tobacco Consumption in Canada, 1994". January 29, 1995.

89. The results also support previous conclusions that cigarette consumption is negatively related to changes in price (e.g., U.S. Department of Health and Human Services 1989). The value of the estimated price elasticity varies across countries, time periods, and other factors, but the overall conclusion is that demand is inelastic. Thus, a price increase tends to reduce consumption while increasing revenues. (p.96)

    Andrews, R.L., Franke G.R. "The Determinants of Cigarette Consumption: A Meta-Analysis," *Journal of Public Policy & Marketing* 1991; 10(1): 81-100.

90. When the national sub-group of smokers were asked whether they had reduced the amount smoked due to price increases during the past few years, approximately one in three stated that they had (34%). Of the respondents who had recently quit smoking (within the past three years), 22% stated that price was a major factor in their decision to quit. (p.6)
    The smoking habits of younger smokers were more likely to be affected by price increases (36% of 18 to 34 year-olds, and 37% of 35 to 54 year olds had reduced smoking due to price), than those in the 55 and older group. Of the smokers in this latter classification, a majority (76%) stated that they have not reduced their smoking due to price increases. . . . (pp.6-7)
    Female smokers appear to be more sensitive to price increases than male smokers. Thirty-eight percent of female smokers surveyed smoke less as a result of the increased price of tobacco, compared to thirty percent of male smokers. Among those who have quit recently, males and females were virtually equal in reporting that price was a major motivating factor (22% of males and 21% of females).
    University graduates and upper income groups ($50,000 and over), are understandably less responsive to price increases. Expectedly, for former smokers in the under $30,000 household income group, price was a major factor in quitting (38%). Twenty-seven percent of ex-smokers with some high school education identified price as a major factor in the decision to quit. (p.7)

    Angus Reid Group, Inc. "Study on Smoking and Taxation Issues". Prepared for: Canadian Heart and Stroke Foundation. Ottawa, Ontario. January 1992.

91. An analysis of the demand for tobacco in Britain in the period 1951-1970 suggests the following conclusions: (p.435)
    The price elasticity is low, in line with earlier studies. It is around 0.4 for women and not significantly different from zero for men. (p.436)

    Atkinson, A.B., "Smoking and the Economics of Government Intervention," In: Perlman, M. (ed.), *The Economics of Health and Medical Care, Proceedings of a*

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Conference held by the International Economic Association at Tokyo. Macmillion. 1974.

92. the overall price elasticity is low, as was found by earlier writers, and there appear to be clear differences between men (for whom it appears not to be significantly different from zero) and for women (for whom it is about 0.35). (p.279)

Atkinson, A.B., Skegg, J.L., "Anti-Smoking Publicity and the Demand for Tobacco in the U.K.," *The Manchester School* 1973;41:265-282.

93. Summary of recommendations
. . . An estimated 102,500 or 40% fewer children would be likely to take up smoking if the government adopted the recommendations contained in this proposal. Health and medical organizations throughout Australia call on the government to:
1. Increase and reform excise and customs duty on tobacco so that, by the Year 2000, Australian cigarettes cost at least 30 cents per stick or on average $10 per packet. (p.5)
. . .
Reducing the affordability of cigarettes is the simplest, most inexpensive and single most effective step that the federal government can take to reduce uptake of smoking by Australian children. (p.9)

Australian Cancer Society, National Heart Foundation. "Federal Excise Duty on Tobacco: A Proposal to the Federal Parliament; May 1998 Budget." 1998.

94. For the first period, the median price elasticity of –0.556 (for the "no bootlegging correction" group) is consistent with the Lyon-Simon result of –0.511 for their period of study (1951-64). However, as clear from the table, this median price elasticity drops to –0.433 between 1965 and 1971 and to –0.173 after 1972. Similarly, the mean price elasticity drops from –0.783 to –0.418 to –0.377 in the respective periods. (p.752)

Baltagi, B.H., Goel, R.K., "Quasi-Experimental Price Elasticities of Cigarette Demand and the Bootlegging Effect," *American Journal of Agricultural Economics* 1987;69(4):750-754.

95. These results indicate ...a significant price elasticity (-0.2) ... (p.150)

Baltagi, B.H., Levin, D. "Estimating Dynamic Demand for Cigarettes Using Panel Data: The Effects of Bootlegging, Taxation and Advertising Reconsidered," *Review of Economics and Statistics* 1986; 68: 148-155.

96. The mean price elasticity of demand is –0.71. The model indicates that competition among manufacturers has been decreasing since 1980. A simulation shows that an increase in the federal excise tax causes a greater increase in price, and a greater decrease in consumption, than does the same increase in the average of state and local tax rates. (p.457)

Barnett, P.G., Keeler, T.E., Hu, T.-W. "Oligopoly Structure and the Incidence of Cigarette Excise Taxes," *Journal of Public Economics* 1995; 57: 457-470.

97. For example, we find that a 10 percent permanent increase in the price of cigarettes reduces current consumption by 4 percent in the short run and by 7.5 percent in the long run. In

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contrast, a 10 percent increase in price for only one period decreases consumption by only 3 percent. In addition, a one period price increase of 10 percent decreases consumption in the previous period by approximately 0.7 percent and consumption in the subsequent period by 1.5 percent. These estimates illustrate the importance of the intertemporal linkages in cigarette demand implied by addictive behavior. (p.2)

Becker, G.S., Grossman, M., Murphy, K.M. "An Empirical Analysis of Cigarette Addiction." National Bureau of Economic Research, Working Paper No.3322. Cambridge, MA. April 1990.

98. The evidence from smoking, heavy drinking, and gambling rather strongly supports our model of rational addiction. In particular, long-run price elasticities are sizable and much bigger than short-run elasticities, higher future as well as past prices reduce current consumption, lower-income persons respond more to changes in prices of addiction goods than do higher-income persons, whereas the latter respond more to changes in future harmful effects, and younger persons respond more to price changes than older persons. (p.240)

Becker, G.S., Grossman, M., Murphy, K.M. "Rational Addiction and the Effect of Price on Consumption," *AEA Papers and Proceedings* 1991; 81(2): 237-241.

99. Permanent changes in prices of addictive goods may have a modest short-run effect on the consumption of addictive goods. This could be the source of a general perception that addicts do not respond much to changes in price. However, we show that the long-run demand for addictive goods tends to be more elastic than the demand for nonaddictive goods. (p.695)

Becker, G.S., Murphy, K.M. "A Theory of Rational Addiction," *Journal of Political Economy* 1988; 96(4): 675-700.

100. Results. Among adult smokers, 3.5% reported that they had stopped smoking, owing in part to the price increase; 35% had considered quitting and 19% had attempted to cut the cost of smoking by switching to cheaper brands or cutting down. Among teenagers, 21% had considered quitting and 26% had cut costs. Low-income smokers were more responsive to the price increase than more affluent smokers.
Conclusions. A modest and temporary price increase promoted quitting among adult smokers and reduced cigarette consumption among low-income teenagers. (p.1389)

. . .

In conclusion, these results suggest that taxes on cigarettes, even if they are countered by tobacco industry price wars, serve to promote smoking reduction among both adults and teenagers, especially those from low-income households. Even a temporary price increase apparently reinforces latent intentions to quit among adults. A tax provided economic incentives to quit and may also send a potent message of societal disapproval that may affect smokers' behavior. Indeed, coupled with appropriate cessation, prevention, and educational initiatives, a cigarette excise tax may become, for many smokers, the last straw on the camel's back. (p.1391)

Biener, L., Aseltine, R.H. JR, Cohen B., Anderka, M. "Reactions of Adult and Teenaged Smokers to the Massachusetts Tobacco Tax" *American Journal of Public Health* 1998; 88(9): 1389-91.

101. It is also interesting to note that the tax coefficient in equation (7) is substantially larger than

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the health scare (D_{64}) or advertising ban (D_{71}) coefficients. These values suggest that cigarette excise taxes had more effect on reducing consumption during the period studied (1954-80) than either the health scare or the advertising ban. (p.408)

Bishop, J.A., Yoo, J.H. " 'Health Scare', Excise Taxes and Advertising Ban in the Cigarette Demand and Supply," *Southern Economic Journal* 1985; 52(2): 402-411.

102. Although increasing excise taxes on cigarettes has been suggested as one of the most cost-effective short-term strategies to reduce tobacco consumption among adults and prevent youth initiation of tobacco use, a tax increase combined with an anti-smoking campaign can be more effective in sustaining the reduction in per capita consumption than a tax increase alone. (p.248)

Bjornson, W., Sahr, R.C., Moore, J., Balshem, H., Fleming, D., Strouse, R., Hall, J., Steel, B.S. "Tobacco Tax Initiative - Oregon 1996," *Morbidity and Mortality Weekly Report* 1997; 46(11): 246-248. [note: quotation is from an Editorial Note accompanying the article]

103. A rise of at least 5 per cent in real prices is required as a minimum in face of the upward pressure of income on consumption. (p.215)

Bosanquet, N., "Have Higher Tax Rates Reduced the European Smoking Rate?" In: Slama, K., ed. *Tobacco and Health: Proceedings from the 9th World Conference on Tobacco and Health.* (New York: Plenum Press, 1995), pp.213-216.

104. An increase in smoking restrictions so that the index increases by 0.5 will decrease the quantity of cigarettes sold domestically by 4%, whereas a $0.75 per pack tax increase will decrease the quantity of cigarettes sold domestically by nearly 19%. (p.950)

Brown, A.B. "Cigarette Taxes and Smoking Restrictions: Impacts and Policy Implications," *American Journal of Agricultural Economics* 1995; 77: 946-951.

105. - Numerous economic studies give estimates of the price elasticity of demand for cigarettes based on various statistical methods and historical data.
- There is a wide range of estimates from these studies.
- The estimates range from –0.2 to -0.75. In other words, some studies indicate that a 10 percent increase in the price of cigarettes will result in a decline in overall cigarette consumption of 2 percent while other studies indicate a decline of 7.5 percent. (p.1)

. . .

Becker (University of Chicago and winner of the 1992 Nobel Prize in Economics), Grossman, and Murphy have conducted one of the most recent and widely respected studies on the effects of price on cigarette consumption. This work utilizes a very sophisticated economic model that accounts for the dynamic effects of addiction to products such as cigarettes. Their study indicates that in the short-run a 10 percent increase in the price of cigarettes will cause a 4 percent decline in cigarette consumption. However, their work indicates that in the long run a permanent 10 percent increase in the price of cigarettes will lead to a 7.5 percent decline in cigarette consumption. (p.2)

Brown, A.B. (Hugh C. Kiger Associate Professor of Agricultural and Resource Economics, North Carolina State University) "The Effect of Cigarette Price on

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Cigarette Consumption: A Partial Summary of Research Findings." North Carolina State University. February 26, 1998.

106. Long run effects of cigarette tax increase of $1.50 per pack on US cigarette consumption
- Using parameter estimates (demand elasticities) from some of the most widely published studies of the relationship between cigarette consumption and price yield forecasts of a long term decline in total US cigarette consumption of between 19 and 49 percent.

Brown, A.B. (North Carolina State University). "Long Run Effects of a $1.50 per Pack Increase in Cigarette Taxes." March 20, 1998.

107. A study was conducted to assess the impact of the February 1994 tobacco tax decrease on smoking among grade 10 youth who were participating in a longitudinal smoking prevention study. . . . Forty-eight percent of all smokers reported that they had increased the amount they smoked after the tax decrease, while only 16% reported decreased smoking over this period. Findings were similar for both males and females. These findings suggest that many underage youth found it easy to purchase cigarettes, and that almost half of grade 10 youth who were smoking reported an increase in their smoking after the tax decrease. (p.1)

Brown, K.S., Taylor, T.E., Madill, C.L., Cameron, R. "The Relationship Between the Tobacco Tax Decrease and Smoking Among Youth: Results of a Survey in South-Western Ontario." Ontario Tobacco Research Unit, Working Paper Series #14, Toronto, 1996.

108. The cigarette companies have opposed tobacco tax increases by arguing that raising cigarette prices would not reduce youth smoking. But the companies' internal documents, disclosed in the tobacco lawsuits, show that they know very well that raising cigarette taxes is one of the most effective ways to prevent and reduce smoking among kids.

. . .

Numerous economic studies in peer-reviewed journals have documented the impact of cigarette tax increases and other price hikes on both adult and underage smoking. The general consensus is that every 10 percent increase in the real price of cigarettes will reduce the number of kids who smoke by about seven percent. This research indicates that raising federal cigarette taxes to produce a 10 percent increase in cigarette prices would reduce the number of current youth smokers by more than 300,000. (p.1)

Campaign for Tobacco-Free Kids [U.S.]. "Increasing Cigarette Taxes Reduces Smoking Among Youth (And the Cigarette Companies Know It)," [Fact Sheet]. The National Center for Tobacco-Free Kids. November 1, 1999.

109. The final recommendation is the simplest: to continue the proven formula of using fiscal policy to serve health objectives by implementing a further increase in the taxation of cigarettes in the 1992 Federal Budget. Failure to increase these taxes will result in increasing the affordability of this harmful product, and inevitably its consumption will rise. (p.9)

Canadian Association of Optometrists, Canadian Cancer Society, Canadian Centre for Substance Abuse, Canadian Council on Smoking and Health, Canadian Medical Association, Heart and Stroke Foundation of Canada, The Lung Association, Non-Smokers' Rights Association, Physicians for a Smoke-Free Canada. "Closing the Loopholes: The Treatment of Tobacco Taxation in

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the 1992 Federal Budget. A Submission to the Minister of Finance, The Honourable Donald Mazankowski" Ottawa, Ontario. December 1991.

110. In Canada it is clear that in recent years tobacco tax increases have been the most reliable tobacco control tool used by federal and provincial governments. The large tobacco tax increases by federal and provincial governments during the 1980's and in 1990-91 made tobacco products less affordable which dramatically decreased consumption, especially among children and adolescents. (p. ii)

. . .

The retail price of tobacco increased dramatically in the 1980's as federal and provincial governments increased tobacco tax rates. This led to unprecedented declines in consumption, even factoring in contraband sales. Figure 3 illustrates the striking relationship.

The decline has been even more dramatic among teenagers. Between 1979 and 1991, the percentage of Canadians aged 15-19 who reported they were smokers declined from 46.5% to 22%. Among daily smokers, the percentage declined from 42% to 16% (Figure 4). The proportion of smokers who were occasional smokers as opposed to daily smokers increased. This has implications for public health. A decrease in tobacco taxes could result in more occasional smokers being able to afford to be daily smokers. It could also reduce the likelihood of occasional smokers quitting smoking altogether. (p.8)

Canadian Cancer Society. "Protecting Health and Revenue: An Action Plan to Control Contraband and Tax-Exempt Tobacco" Ottawa, Ontario. January 1994.

111. Cigarette taxes should increase by at least $10.00 per carton ($5.00 federal, $5.00 provincial) in Ontario, Quebec, New Brunswick, Nova Scotia and P.E.I. Taxes on other types of tobacco products should be equalized with those on cigarettes.

. . .

The recommended increase will result in a significant reduction in smoking, particularly among youth.

The recommended increase will generate about a $1.5 billion in incremental revenue for government. The federal government should use a portion of the new revenue to fund a greatly enhanced tobacco control program. (p.1)

Canadian Cancer Society. "Advancing Public Health: Recommendations for a Major Tobacco Tax Increase" January 12, 1999.

112. While there is no serious disagreement with the fact that price affects consumption, there are varying estimates of the extent of this relationship and the price-elasticities of specific demographic groups. (p.1)

. . .

Based on the best available information on the relationship between tobacco product price and consumption, we can expect a price-elasticity of something in the range of –0.4 to –0.7 overall. A significantly greater price effect can be anticipated among certain groups, such as young people. (p.2)

Canadian Cancer Society, Canadian Council on Smoking and Health, Canadian Dental Association, Canadian Medical Association, Canadian Oncology Society, Heart and Stroke Foundation of Canada, The Lung Association, Non-Smokers' Rights Association, Physicians for a Smoke-Free Canada "Tobacco Taxation in Canada: New Directions. A Submission to the Honourable Paul Martin, Minister

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of Finance" Ottawa, Ontario. February 1995.

113. We were very supportive of the 2 cents a cigarette increase brought forward in the 1989 Budget and wish to reiterate our strong position in favour of tobacco tax increases. We are thereby submitting our proposal for the up-coming 1990 federal budget. This submission highlights the following points:

- An increase of 2.5 cents a cigarette and 4.5 cents per gram on manufactured tobacco would generate a net gain of $1.2 billion to the Federal Treasury.
- Such an increase in tobacco tax would continue supporting the government's overall policy to reduce tobacco consumption. On the other hand, failure to increase tobacco prices would undermine progress to date. Our suggested tobacco tax increase in conjunction with other federal health measures would diminish consumption by 8%, thus reducing death, disease and economic losses caused by tobacco use. (p.ii)

. . .

Perhaps the most important reason for a further significant increase in tobacco taxes is the reinforcement such a measure will give to the overall federal message with respect to tobacco use. To effectively protect non-smokers, control tobacco use, and prevent the death, injury and economic losses it causes requires a comprehensive effort. The federal government used this approach in 1989 and it worked. (p.18)

Canadian Cancer Society, Canadian Council on Smoking and Health, Canadian Lung Association, Canadian Medical Association, Heart and Stroke Foundation of Canada, Non-Smokers' Rights Association, Physicians for a Smoke-Free Canada. "Tobacco Tax Policy in Canada, A Health Perspective. A Submission to the Minister of Finance, The Honourable Michael Wilson" Ottawa, Ontario. January 1990.

114. The 1991 federal budget should build on the tobacco tax changes announced in the 1989 budget. Increases in taxation should reduce the affordability of tobacco products and thus reduce their consumption by existing smokers and deter non-smokers -- especially the young -- from becoming addicted. (p.3)

. . .

Perhaps the best assessment of the relationship between the price and demand for tobacco products in Canada is simply to examine the experience of Canadian taxation and consumption of tobacco products over the past few years. From 1980 to 1989 the real price of tobacco increased by 101%, while total cigarette consumption declined by 20.2% or about 30% in per capita terms. . . .

The price of tobacco in Canada has played a key role in reducing tobacco consumption. This is shown when Canadian sales data is compared to that from the United States where price has been less of a factor. U.S. consumption in the 1980's has fallen less than in Canada, and since the implementation of our *Tobacco Products Control Act* and the 1989 tax adjustments, Canadian tobacco consumption has fallen twice as rapidly as in the United States. (p.23)

Canadian Cancer Society, Canadian Council on Smoking and Health, Canadian Medical Association, Physicians for a Smoke-Free Canada. "Sustaining a Successful Policy: The Treatment of Tobacco Taxation in the 1991 Federal Budget. A Submission to the Minister of Finance, The Honourable Michael Wilson" Ottawa, Ontario. December 1990.

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115. Increasing tobacco taxes is a proven tool in combating youth smoking and reducing the death toll from the tobacco epidemic. (p.1)

Canadian Cancer Society, Coalition québécoise pour le contrôle du tabac, Non-Smokers' Rights Association, Ontario Campaign for Action on Tobacco, Physicians for a Smoke-Free Canada, "Tobacco Taxes in Canada" 2000.

116. Tobacco taxation is an essential policy tool to prevent nicotine addiction among teenagers and to reduce the death toll among people who are already addicted. This is the consensus view of health groups in Canada and in other industrialized countries. International organizations such as the World Bank recommend increased tobacco taxes. Despite its varying public comments, the tobacco industry itself, in its internal documents, acknowledges the effectiveness of cigarette taxes in reducing consumption and preventing tobacco use among teenagers. Indeed, the enormous energy that the industry devoted to obtaining a tax rollback in 1994 provides a clear indication of how it views this issue. (p.5)

Canadian Cancer Society, Non-Smokers' Rights Association, Physicians for a Smoke-Free Canada, Quebec Coalition on Tobacco Control. "Surveying the Damage: Cut-rate Tobacco Products and Public Health in the 1990's" Ottawa, Ontario. October 1999.

117. These measures [tobacco tax increases], besides increasing revenues, complement the government's comprehensive strategy of reducing tobacco smoking in Canada, including legislation to ban tobacco advertising, and increasing public knowledge of the health hazards of smoking. (p.56)

Canadian Department of Finance. "Budget Papers. Tabled in the House of Commons by the Honourable Michael H. Wilson, Minister of Finance" April 27, 1989.

118. Allan Rock, the Minister of Health, added, "This tax increase is part of our efforts to improve the health of Canadians, particularly youth, by encouraging them to stop smoking or remain non-smokers." (p.1 of internet version)

Canadian Department of Finance. "Tobacco Taxes Increased" February 13, 1998 [news release]. Downloaded September 23, 2001, www.fin.gc.ca/news98/98-019e.html

119. "The measures introduced today reaffirm the Government's determination to reduce tobacco consumption in Canada," Minister Martin said.
Health Minister Allan Rock added, "Tax increases are one part of our overall strategy to reduce smoking rates, particularly among younger Canadians. We must also intensify our efforts to reduce this leading cause of preventable death through means such as tough anti-tobacco advertising, upcoming labelling and information reporting regulations, and other measures." (p.2 of internet version)

Canadian Department of Finance. "Tobacco Tax Increases Announced" November 5, 1999 [news release]. Downloaded September 23, 2001, www.fin.gc.ca/news99/99-096e.html

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120. Current cigarette price is always found to have a negative and, in most models, statistically significant impact on average cigarette consumption. (p.201)

. . .

Estimated long-run price elasticities of demand are in the range –0.27 to –0.36 for the full sample of ever smokers. These estimates imply that the recent doubling of the Federal excise tax on cigarettes will be effective in reducing cigarette consumption, with average consumption falling approximately 4-6% as a result of the 15% increase in average cigarette prices. This impact may be larger if the increase in the excise tax results in a greater increase in cigarette prices. (p.201)

. . .

Finally, increased cigarette prices, which would result from increased cigarette excise taxes, are also found to have a significant negative impact on average cigarette consumption. (pp.202-203)

Chaloupka, F., "Clean Indoor Air Laws, Addiction and Cigarette Smoking," *Applied Economics* 1992;24:193-205.

121. Conclusions

The review of the literature clearly shows that the answer to the question posed in the title of this chapter is 'very effective.' Increasing cigarette and other tobacco taxes will lead to significant reductions in the use of these products, resulting from reductions in the frequency of use by continuing users, as well as reductions in the prevalence of use. Given this evidence, higher tobacco taxes are likely to be the single most effective policy option for reducing the public health toll from tobacco. When combined with other tobacco control activities, which could be funded by earmarked tobacco taxes, even larger reductions in youth and adult tobacco use could be achieved. (p.7)

Chaloupka, F.J. (Professor of Economics, University of Illinois at Chicago; Research Associate, National Bureau of Economic Research) "How Effective are Taxes in Reducing Tobacco Consumption?" March 1999.

122. Conclusions

A large literature from economics clearly indicates that large cigarette price increases will lead to substantial reductions in cigarette smoking, particularly in the prevalence of cigarette smoking among youth. When combined with other tobacco control activities, including prevention and cessation programs, counter-advertising, comprehensive and aggressive enforcement of limits on youth access, and more, even larger reductions in youth and adult smoking could be achieved. (p.14)

Chaloupka, F.J. "The Impact of Proposed Cigarette Price Increases," Health Science Analysis Project (The Advocacy Institute). Washington, D.C. May 1998. Policy Analysis No. 9.

123. Conclusions

Economists have contributed much to our understanding of the impact of prices and tobacco control policies on cigarette smoking and other tobacco use. Most notably, they have clearly demonstrated the importance of price as a determinant of tobacco use, helping to change the once conventional wisdom that the demands for cigarettes and other tobacco products, because of the addictive nature of these products, are exceptions to the basic laws of economics. (p.S109)

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Chaloupka, F.J. "Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products," *Nicotine & Tobacco Research*, 1999; 1 (Supp. 1): S105-S109.

124. The estimates presented above support the hypothesis that increasing the price of cigarettes by increasing excise taxes on them would effectively reduce smoking. Doubling the federal excise tax to $0.32 (proposed as part of a deficit reduction program), increasing price by approximately 15 percent (assuming a competitive market), would lead, in the long run, to a 4-6 percent fall in consumption even more if cigarette producers use the tax increase as a coordinating mechanism for an oligopolistic price increase. (p.740)

Chaloupka, F.J. "Rational Addictive Behavior and Cigarette Smoking," *Journal of Political Economy* 1991; 99(4): 722-742.

125. The data employed in this research are taken from the 1992, 1993 and 1994 surveys of eighth, tenth, and twelfth grade students conducted by the University of Michigan's Institute for Social Research as part of the Monitoring the Future Project. . . . The average overall estimated price elasticity of youth cigarette demand of –1.313 indicates that large increases in cigarette excise taxes would lead to sharp reductions in youth smoking. (p.i)

Chaloupka, F.J., Grossman, M. "Price, Tobacco Control Policies and Youth Smoking," National Bureau of Economic Research. Cambridge, MA. September 1996. Working Paper No. 5740.

126. Young men are much more responsive to changes in the price of cigarettes than young women. The prevalence elasticity for young men is almost twice as large as that for young women. Smoking rates of young black men are significantly more responsive to changes in price than young white men. (p.373)

Chaloupka, F.J., Pacula, R.L. "Sex and Race Differences in Young People's Responsiveness to Price and Tobacco Control Policies," *Tobacco Control* 1999; 8: 373-377.

127. Every major national tobacco legislation proposed in the past two years has called for significant increases in the price of cigarettes as a way to discourage youths from smoking. One argument used to oppose these bills is that increases in the price of cigarettes would cause youths to substitute marijuana for cigarettes. . . .

. . . Examination of the cross-price effects clearly shows that higher cigarette prices will not increase marijuana use among youths. In addition to reducing youth smoking, we find that higher cigarette prices significantly reduce the average level of marijuana used by current users. Cigarette prices also have a negative effect on the probability of using marijuana, but these findings are not significant at conventional levels. (p.i)

. . .

Conclusions

Based on the estimates described above, the answer to the question posed in the title of this paper is clearly "No" – higher cigarette prices will not increase youth marijuana use. Instead, these estimates indicate that higher cigarette prices, in addition to reducing youth cigarette smoking, would certainly lower the average frequency of marijuana use among youth users and would likely lower the probability of using marijuana. According to these estimates, a ten-percent increase in cigarette price is predicted to lower the prevalence of

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youth marijuana use between 3.4% - 7.3% and decrease the average level of marijuana use by regular users between 3.6% - 8.4%. (pp.15-16)

Chaloupka, F.J., Pacula, R.L., Farrelly, M.C., Johnston, L.D., O'Malley, P.M., Bray, J.W. "Do Higher Cigarette Prices Encourage Youth to Use Marijuana?" Working Paper 6939. National Bureau of Economic Research, Cambridge, MA. February 1999.

128. The real cigarette price and clean indoor air laws are negative and statistically significant. . . . The own-price elasticity of demand implied by models 2, 3, and 4 is about –0.24, an estimate consistent with other recent studies of the demand for cigarettes. (p.79)

Chaloupka, F.J, Saffer, H., "Clean Indoor Air Laws and the Demand for Cigarettes," *Contemporary Policy Issues* 1992; 10: 72-83.

129. The estimates indicate that higher smokeless tobacco taxes would significantly reduce the number of young men using smokeless tobacco and the frequency of smokeless tobacco use. (p.503)

. . .

The average overall price elasticity of smokeless tobacco demand for male youths was –0.59. This implies that large increases in smokeless tobacco excise taxes, by significantly raising price, would lead to sharp reductions in smokeless tobacco use among young males, with much of the reduction coming from a drop in the number of young male smokeless tobacco users. (p.515)

Chaloupka, F.J., Tauras, J.A., Grossman, M. "Public Policy and Youth Smokeless Tobacco Use," *Southern Economic Journal* 1997; 64(2): 503-516.

130. The results described above indicate that higher cigarette excise taxes, which would raise cigarette prices, would result in substantial reductions in both smoking participation and average daily cigarette consumption among US college students. The overall estimated price elasticity of cigarette demand for college students fell in the range from –0.906 to –1.309. Approximately half of the drop in consumption resulting from increased cigarette prices would be the result of reduced smoking participation, while the remaining half would come from reductions in the number of cigarettes consumed by smokers. (p.369)

. . .

Thus, these estimates confirm what had been the conventional wisdom: that cigarette smoking among young adults is relatively more responsive to price than is smoking among adults. The average overall price elasticity of demand for college students of –1.11 is almost three times the consensus estimate of –0.4 for adults. This suggests that increases in cigarette excise taxes, which would increase cigarette prices, are a very effective means of reducing cigarette smoking among young adults. Given that this is the age at which smoking habits are becoming firmly established, discouraging smoking in this age group is likely to lead to permanent reductions in cigarette smoking in all age groups. (p.370)

Chaloupka, F.J., Wechsler, H. "Price, Tobacco Control Policies and Smoking Among Young Adults," *Journal of Health Economics* 1997; 16(3): 359-73.

131. Excise elasticities of demand for non-cigarette tobacco and cigarettes were calculated for Papua New Guinea for the 14 years 1973-86. Respectively, these were –0.50 and –0.71. This means that 10 percent increases in cigarette and non-cigarette tobacco excise are

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associated with an estimated 7.1 percent fall in demand for cigarettes and a 5 percent decrease in the demand for tobacco. As tax (excise) elasticities would normally be significantly smaller than price elasticities, these results imply that the consumption of cigarettes and tobacco in Papua New Guinea is much more responsive to prices than in the USA and other Western countries. The level of excise is therefore an important and practical instrument for the control of consumption. These elasticities appear to be the first reported for a developing country. It is suggested that if they are indicative of behaviour in lower income countries then increasing tobacco and cigarette excise should be considered an important strategy for the control of smoking in these countries which because of their large populations, are huge markets for tobacco products and thus major targets for tobacco control measures. (p.537)

Chapman, S., Richardson, J. "Tobacco Excise and Declining Tobacco Consumption: The Case of Papua New Guinea" *American Journal of Public Health* 1990; 80(5): 537-540.

132. Results shown in Table 1 suggest the potential of cigarette pricing as an incentive to improve health behaviour and reduce the number of smokers. The consumption of cigarettes is more elastic among young people than among adults, because young people have less money and are more sensitive to price changes. Therefore, tax increases will especially affect the smoking behaviour of young people. (p.8)

Choi, B.C.K., Ferrence, R.G., Pak, A.W.P. "Evaluating the Effects of Price on the Demand for Tobacco Products: Review of Methodologies and Studies." Ontario Tobacco Research Unit, Literature Review Series No. 11, Toronto, April 1997.

133. Raising tobacco taxes is the most effective way to rapidly and significantly reduce tobacco use by young people. Youth tobacco consumption is influenced by prices at least as much as adult consumption. For every 10 percent increase in cigarette prices, demand among children and teenagers declines by as much as 14 percent. (p.7)

Coalition on Smoking OR Health [U.S.]. "Saving Lives and Raising Revenue: The Case for a $2 Federal Tobacco Tax Increase." Washington, DC. July 1994.

134. Myth: An increase of one to two dollars in the tax on tobacco products will result in the loss of hundreds of thousands of jobs in the US economy.
Reality: An increase in the tobacco tax will significantly affect only a fraction of the jobs the Tobacco Institute says are at risk and will create many new jobs. Few jobs will be lost and many lives will be saved.

. . .

Tobacco causes death and disease, which seriously harms the economy. A reduction in tobacco use will improve productivity, reduce health care costs, and guarantee additional economic activity. (p.10)

Coalition on Smoking OR Health [U.S.]. "Tobacco, Health, and Jobs: Myths and Realities" *World Smoking and Health* 1994; 19(1): 9-10.

135. Canadian studies that examined the relationship of cigarette prices to consumption for the periods 1950-1973, 1949-1980 and 1971-1981 reported elasticities of –0.75, –0.73 and –0.71 repectively. (p.8)

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Collishaw, N. (Bureau of Tobacco Control and Biometrics, Laboratory Centre for Disease Control, Department of National Health and Welfare [Canada]. "Tobacco Pricing" Working Paper 12/84. October 1984.

136. Canada's tobacco control policies became progressively more comprehensive and effective from 1981 to the present. In addition to the advertising ban, there are strong warnings on cigarette packages, effective protection from involuntary exposure to tobacco smoke in many enclosed public places and workplaces, high tobacco taxes, and effective promotional and educational campaigns in favour of a smoke-free life. From 1981 to 1992, cigarette consumption per adult declined by over 37%. Prevalence of smoking among adolescents 15 to 19 years of age declined by over half, from 47% in 1979 to 23% in 1991. (p.i)

Collishaw, N.E. (Tobacco or Health Programme, World Health Organization) "Canada: Dealing with Further Attacks After the Main Victory; Background notes for a presentation to the Special Symposium: Case histories – Successes and failures in developing national tobacco control programmes" Third International Conference on Preventive Cardiology. Oslo, Norway. June 30, 1993.

137. In 1983, however, cigarette sales declined by 4%, the first appreciable decline since 1949. The real price of cigarettes increased by 14% in 1983, reversing a long-term trend of a declining real price. (p.148)

Collishaw, N.E., Rogers, B., "Tobacco in Canada," *Canadian Pharmaceutical Journal*; 1984; 117(4): 147-150.

138. If the Administration's proposed increase in the tax on smokeless tobacco products is enacted, we can expect 1.3 million current users of these products to quit. The estimate of fewer users is based on a 2.6% decrease in the number of smokeless users for every 10% increase in the price, a formula taken from research on cigarette smokers. Should manufacturers lower their prices as they recently have on cigarettes, fewer users will quit. And, the tax would bring in $750 million in new revenue. (p.14)

Connolly, G.N. "Taxing Other Tobacco Products" *World Smoking and Health* 1994; 19(1): 13-14.

139. The introduction of cigarette taxes, a limited health promotion programme, and the absence of massive promotional campaigns by the sole tobacco company on Mauritius have led to a striking and continued decrease in smoking prevalence and cigarette consumption on the island. (p.345)

Cox, H.S., Williams, J.W., de Courten, M.P., Chitson, P., Tuomilehto, J., Zimmet, P.Z., "Decreasing Prevalence of Cigarette Smoking in the Middle Income Country of Mauritius: Questionnaire Survey," *British Medical Journal* 2000; 321: 345-349.

140. When the price of something goes up, people buy less of it. That's basic logic and basic economics. That's also the principle behind the most important factor in Canada's tobacco-control strategy: higher tobacco taxes. (p.119)

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Higher prices can work in a number of ways. Smokers may feel that the price is too high and decide to quit or smoke less. Higher prices might combine with other factors and finally push a smoker into quitting. Even if a smoker only decides to cut down, this produces health benefits. Fewer cigarettes a day may reduce the risk that a smoker will contract a tobacco-caused disease. As previously noted, people who smoke fewer cigarettes a day are more likely to attempt to quit and to quit successfully than people who smoke more cigarettes per day. For teenagers, higher prices may push cigarettes beyond the level of affordability or may delay the age when smoking begins, thus decreasing the long-term risk to health. Decreasing the amount smoked may reduce the risk that addiction will set in. (pp.119-120)

. . .

High tobacco taxes are a critical component of a comprehensive strategy. All forms of tobacco products should be taxed at a rate equivalent to that for cigarettes to discourage cigarette smokers from switching to cheaper alternatives. (p.249)

. . .

There should be an end to duty-free sales. Lower duty-free prices encourage consumption and may result in large quantities of tax-exempt tobacco entering the market illegally. As well, governments lose revenue. (p.250)

Cunningham, R. *Smoke & Mirrors: The Canadian Tobacco War* (Ottawa: International Development Research Centre, 1996).

141. Higher tobacco taxes will lead to a decrease in consumption, including among price sensitive teenagers. In the U.S., analysts estimate that the recent price increase will lead to a decrease in U.S. consumption of 8-10%. (p.2)

Cunningham, R. (Senior Policy Analyst, Canadian Cancer Society). "Re: Tobacco Taxes and Draft Report on Pre-Budget Consultations" Letter to Chair and Members, Standing Committee on Finance, House of Commons. November 30, 1998.

142. Thus policy predictions from our cross-sectional models appear to lend support to the claim that tax or price increases can substantially reduce youth smoking. (p.18)

DeCicca, P., Kendkel, D., Mathios, A. "Putting Out the Fires: Will Higher Taxes Reduce Youth Smoking?" Department of Policy Analysis & Management, Cornell University. December 1997.

143. In general, the results here indicate a somewhat higher sensitivity of quitting hazards than starting hazards to cigarette prices, regulation and information. (p.63)

Douglas, S. "The Duration of the Smoking Habit" *Economic Inquiry* 1998; 36: 49-64.

144. In the models of experimentation, price was not an important variable, and therefore, we do not report the elasticity estimates for experimentation among either the 10-13-year olds or the >= 14-year-olds. As expected, price was negatively associated with current and established smoking participation and conditional demand. Current smoking participation elasticity was –0.83. Among current smokers, conditional demand elasticity was –0.87, and total elasticity was –1.70. Among established smokers, the participation elasticity was –1.56, conditional demand –0.68, and total elasticity was –2.24. (p.266)

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Despite these limitations, our findings represent a unique contribution to the literature on the role of prices in deterring adolescent smoking. Not just younger smokers, but all experimenters appear unaffected by cigarette prices. . . .At the same time, our relatively large conditional demand elasticity estimates for current smokers and the relatively large participation elasticity estimates for established smokers suggest that higher cigarette prices may indeed slow down progression from higher levels of experimentation to established smoking patterns that are likely to persist as a lifelong addiction. Therefore, far from suggesting that price is not important, our research supports the conclusion that cigarette prices are a critically important policy tool in reducing adolescent smoking beyond experimentation. (p.269)

Emery, S., White, M.M., Pierce, J.P. "Does Cigarette Price Influence Adolescent Experimentation?" *Journal of Health Economics* 2001; 20: 261-270.

145. Using data for over 250,000 high school seniors from the Monitoring the Future Project over the 1977-92 time period, we estimate the impact of higher cigarette taxes on smoking participation. Unlike all previous papers on this topic, we use the time series variations in cigarette taxes within a state to identify the impact of cost on smoking participation. Using the full sample, we calculate a smoking participation elasticity of 0.20, a value substantially smaller than previous estimates. The elasticity has however increased over time. Data for the 1985-92 time period suggests the elasticity has risen in magnitude to –0.50. We find no difference in the elasticities for males and females, but a much larger elasticity for nonwhites than for white, non-Hispanic teens (p.i).

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To put these results into perspective, consider the impact on teen smoking from a recent bill proposed by Senator John McCain of Arizona that would raise cigarette taxes by $1.10 over a period of years. To simplify the problem, we will assume the tax hike happens in one year. In 1982-4 dollars, the $1.10 tax hike would increase taxes by (1.10/1.622)=$0.678 per pack. Using the estimates for the 1985-1992 time period . . . this tax hike will reduce teen smoking by 9.8 percentage points (0.678*-0.144). Given the current teen smoking among high school seniors of 36.5 percent, this represents about a 27 percent drop in teen smoking rates. (p.20)

Evans, W.N. (Department of Economics, University of Maryland), Huang, L.X. (NORC) "Cigarette Taxes and Teen Smoking: New Evidence from Panels of Repeated Cross-Sections". April 15, 1998.

146. In this paper, we estimate the causal relationships between cigarette taxes, maternal smoking behaviour, and birth outcomes. We are the first to show that pregnant women are responsive to changes in cigarette tax rates. The smoking participation price elasticity is roughly –0.50. This estimate appears to be robust to the inclusion of detailed controls for mother's characteristics as well as health habits, plus controls for cross-border shopping and state clean indoor air restrictions. We are also able to show that increases in cigarette tax rates have a beneficial impact on mean birth weight.

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To put these results into perspective, consider the impact on maternal smoking from a recent bill proposed by Senator John McCain of Arizona that would raise cigarette taxes by $1.10 over a period of years. To simplify the problem, we will assume the tax hike happens in 1 year. In 1982-4 dollars, the $1.10 tax hike would increase taxes by (1.10/1.622)=67.8 cents per pack. Using the results from model (3) from the smoking participation probit, a 67.8 cent tax hike would reduce maternal smoking by about 5.5 percentage points, which is a 32% reduction in smoking. Using the results from model (3) in the low birth weight probits

Tab

from Table 3, the tax hike will reduce low birth rates by .32 percentage points which is a 5% reduction. The smaller size of the impact of taxes on birth outcomes is not surprising given the fact that taxes can only alter the behavior of the 17% of pregnant women who smoke. (p.152)

Evans, W.N., Ringel, J.S. "Can Higher Cigarette Taxes Improve Birth Outcomes?" *Journal of Public Economics* 1999; 72: 135-154.

147. Nearly every study finds smoking declines in the face of higher taxes and/or prices but the results do vary across surveys. (p.11)

. . .

Our best estimate is that the elasticity of demand in the short run is around –0.30 to –0.50, with roughly half of any demand change coming from a drop in smoking participation. Long-term elasticities may however be 1.75 times short-run values. (p.18)

Evans, W.N. (Department of Economics, University of Maryland), Ringel, J.S. (Jeanne S. Ringel, Department of Economics, Louisiana State University), Stech, D. (Department of Economics, University of Maryland) "Tobacco Taxes and Public Policy to Discourage Smoking," November 6, 1998.

148. For all respondents, the models estimated a prevalence price elasticity of –0.15 and a consumption price elasticity of –0.10, yielding a total price elasticity estimate of –0.25. Therefore, a 50% price increase could cause a 12.5% reduction in the total U.S. cigarette consumption, or approximately 60 billion fewer cigarettes smoked per year. In the age-specific model, younger smokers were more likely than older smokers to quit smoking, and after controlling for income, education, and other nonprice variables, Hispanic smokers and non-Hispanic black smokers were more likely than white smokers to reduce or quit smoking in response to a price increase. This pattern was consistent for all age groups. Among both non-Hispanic blacks and Hispanics, smokers aged 18-24 years were substantially more price-responsive than smokers aged greater than or equal to 40 years. Lower-income populations also were more likely to reduce or quit smoking than those with higher incomes. The total price elasticity was –0.29 for lower-income persons compared with –0.17 for higher income persons.

Farrelly, M.C, Bray, J.W. "Response to Increases in Cigarette Prices by Race/Ethnicity, Income, and Age Groups – United States, 1976-1993," *Morbidity and Mortality Weekly Report* 1998; 47(29): 605-609.

149. Based on these findings, a ten per cent increase in the relative price of cigarettes (over and above inflation) would likely result in a seventeen per cent decrease in cigarettes consumed per capita by 15-19 year olds, a fourteen per cent decrease in smoking, and a six per cent decrease in consumption per smoker. (p.6)

Ferrence, R.G., Garcia, J.M., Sykora, K., Collishaw, N.E., Farinon, L. "Effects of Pricing on Cigarette Use Among Teenagers and Adults in Canada 1980-1989." Addiction Research Foundation, February 1991.

150. Trend data indicated a sharp drop in California cigarette consumption coincident with the tax increase. Time-series regression analyses support this observation, and suggest that a 5% to 7% decline in consumption is attributable to the tax increase. (p.867)

Flewelling, R.L., Kenney, E., Elder, J.P., Pierce, J., Johnson, M., Bal, D.G.

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"First-Year Impact of the 1989 California Cigarette Tax Increase on Cigarette Consumption," *American Journal of Public Health* 1992; 82(6): 867-869.

151. Taxation, however, could have more substantial effects. Estimates of the price elasticity of demand (≅ -0.45) indicate that a 10% increase in the price of cigarettes will lower consumption by 4.5%. This effect becomes more pronounced in the long run. (p.487)
Fujii, E.T. "The Demand for Cigarettes: Further Empirical Evidence and its Implications for Public Policy," *Applied Economics* 1980; 12: 479-489.

152. With respect to price we find evidence of a phenomenon first noted, to our knowledge, by Douglas (1998): higher current price is a predictor of lower smoking prevalence, but a higher previous-period price shows up as a strong positive predictor of prevalence. (p.12)
Galbraith, J.W., Kaiserman, M. "The Response of Youth Smoking Prevalence to Price: Evidence from the Youth Smoking Survey." 1999.

153. Full sample estimates of the short-run elasticities of taxed and total consumption with respect to the legal price are –1.01 and 0.40 respectively. (p.288)
Galbraith, J.W., Kaiserman, M. "Taxation, Smuggling and Demand for Cigarettes in Canada: Evidence from Time-Series Data," *Journal of Health Economics* 1997; 16: 287-301.

154. Manipulation of the price of tobacco products has proven to be one of the most effective tools in tobacco control. (p.95)
Goodyear, M.D.E. "Death or Taxes? An Examination of Recent Changes in Tobacco Taxation Policy in Canada," *Canadian Respiratory Journal* 1994; 1(2): 95-103.

155. The benefits of quitting in terms of extra length and quality of life are very significant and are in addition to the utility gained from goods and services that can be bought with the money that quitters save. With a fifty per cent increase in excise about 34,000 discounted life years would be saved. The money saved would be about $800 per quitter per year. It is quite clear that the benefits overwhelmingly exceed the cost. (p.790)
Goss, J., "An Economist's Rationale for Government Intervention to Reduce the Consumption of Cigarettes," In: Durston, B., Jamrozik, K., ed. *Tobacco & Health 1990: The Global War. Proceedings of the Seventh World Conference on Tobacco and Health.* 1st-5th April 1990. Perth, Western Australia, Australia. 1990. pp.789-793.

156. "The Government's anti-tobacco strategy will help improve the health of Canadians by discouraging smoking," said Minister Martin [Finance Minister Paul Martin]. "By increasing taxes sharply and introducing a new tax structure for tobacco, we are taking important steps now and positioning ourselves to take further steps as need be." (pp.1-2 of internet version)
Government of Canada "Government Announces Comprehensive Strategy to Discourage Smoking" [news release] April 5, 2001. Downloaded September 23,

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2001, www.fin.gc.ca/news01/01-039e.html

157. The long-run impacts of an increase in the excise tax rate should, however, be considerably more substantial. Given the evidence that individuals are unlikely to initiate smoking after age 21, it is quite possible that the cohort of young persons who do not begin to smoke as a result of the tax increase would never become regular smokers. If the tax increase is maintained in real terms, it would continue to discourage smoking participation by successive generations of youths. Thus, it would gradually impact the smoking levels of older age groups as the smoking-discouraged cohorts move through the age spectrum. As a consequence, over a period of several decades, aggregate smoking and its associated detrimental health effects would decline substantially. (p.486-487).

Grossman, M., "Taxation and Cigarette Smoking in the United States," In: Forbes, Frecker, Nostbakken, ed., *Proceedings of the Fifth World Conference on Smoking and Health.* Canadian Council on Smoking and Health. Ottawa. Volume 1. 1983. pp.483-487.

158. [O]ver 800,000 premature deaths in the cohort of Americans 12 years and older in 1984 would be averted if the Federal excise tax on cigarettes were restored to its real value in 1951. (p.1193)

. . .

The principal message of the above findings is that an increase in the Federal excise tax rate on cigarettes is a potent policy to curtail smoking. This is because teenagers are more responsive to changes in the price of cigarettes than adults and because the price elasticity of smoking participation is much larger than the price elasticity of the quantity smoked by smokers. These factors mean that tendencies for smokers to compensate for reduction in the number of cigarettes consumed by switching to higher tar and nicotine brands, inhaling more deeply, or reducing idle burn can be ignored in evaluating the impact of excise tax changes. More importantly, the large teenage smoking participation elasticity implies that excise tax increases are very effective tools to prevent the onset of an habitual behaviour. (p.1199)

Grossman, M. "Health Benefits of Increases in Alcohol and Cigarette Taxes," *British Journal of Addiction* 1989; 84: 1193-1204.

159. Teenage cigarette smoking is sensitive to the price of cigarettes. The most recent research would reduce the number of teenagers who smoke by 7%. If the proposed 43-cent hike in the Federal excise tax rate on cigarettes contained in the Hatch-Kennedy Bill were enacted, the number of teenage smokers would fall by approximately 16%. This translates into more than 2.6 million fewer smokers and more than 850,000 fewer smoking-related premature deaths in the current cohort of 0 to 17-year olds. Adjusted for inflation, the current 24 cent-a-pack tax costs the buyer about half of the original cigarette tax of 8 cents imposed in 1951. A substantial tax hike would curb youth smoking; this strategy should move to the forefront of the antismoking campaign. (p.291)

...

We found that a 10% increase in price would lower the number of youthful smokers by 7%, a somewhat smaller effect than the 12% projected in the 1981 study. Consumption among smokers, however, would decline by 6%, which is three times larger than the decline projected in the 1981 study. (p.295)

Grossman, M., Chaloupka, F.J. "Cigarette Taxes: The Straw to Break the Camel's Back," *Public Health Reports* 1997; 112(4): 290-97.

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160. We examine the effectiveness of several cigarette control policies in discouraging smoking among people aged 12-17 in the United States.

> . . . .
> We found large price effects: a 10% increase in price would lower the number of young smokers by 7% and would lower consumption among smokers by 6%. (p.697)
>
> . . . .
> If this 15-cent tax increase is fully passed on to consumers, the price of a pack of cigarettes would rise by approximately 8%. According to our estimates, this would result in almost 1 million fewer smokers in the current cohort of 0 to 17-year olds and over 300 000 fewer smoking-related premature deaths in this cohort. Larger price increases would result in even larger reductions in the number of young smokers and the number of premature deaths. . . . These are short-run effects. A tax or price increase would, if it were maintained in real terms or adjusted for inflation, continue to discourage smoking by successive generations of young people and would gradually affect the smoking rates of older cohorts as those discouraged from smoking move through the age spectrum. Accordingly, the effect would be much greater in the long run. (p.698)
>
> Grossman, M., Chaloupka, F.J., "Price, Tobacco Control Policies and Smoking Among Young People in the United States," In: Lu, R., Mackay, J, Niu, S., Peto, R. ed., *Tobacco: The Growing Epidemic. Proceedings of the Tenth World Conference on Tobacco or health.* 24-28 August 1997, Beijing, China.

161. The demand elasticities for youth participating in smoking are larger than adult smoking participation elasticities. The relevant figures are –1.20 for youths aged 12-17, 1.74 for 20-25 years olds, -.44 for 26-35 year olds, and -.15 for persons above the age of 35. Because of its effect in discouraging teenage smoking participation, a tax increase that is maintained in real terms over a period of several decades could decrease aggregate smoking substantially. (p.216)

> Grossman, M., Sindelar, J.L., Mullahy, J., Anderson, R. "Alcohol and Cigarette Taxes," *Journal of Economic Perspectives* 1993; 7(4): 211-222.

162. I find that the most important policy determinant of youth smoking, particularly among older teens, is prices. Prices are a significant and sizeable determinant of smoking by older teens in all three data sets, although the estimated price elasticity varies significantly. On the other hand, price does not appear to be an important determinant of smoking by younger teens. (p.i)

> Gruber, J. "Youth Smoking in the U.S.: Prices and Policies" Working Paper 7506. National Bureau of Economic Research, Cambridge, MA. January 2000.

163. [W]e document that price is a powerful determinant of smoking for high school seniors; using state fixed effects models on data for the 1991-1997 period we estimate an elasticity of smoking participation of –0.67, which suggests that the drop in cigarette prices in the early 1990s can explain 26% of the subsequent upwards smoking trend for seniors. (p.i)

> Gruber, J., Zinman, J. "Youth Smoking in the U.S.: Evidence and Implications" Working Paper 7780. National Bureau of Economic Research. Cambridge, Massachusetts. July 2000.

Tab

164. However, the prevalence of smoking was greater in the provinces where tobacco taxes had been cut than in those where they had not, and this difference increased from 2.0% at the beginning of the survey to 3.4%, by the end. In addition, rates of starting cigarette smoking were higher and smoking quit rates were lower in the provinces where taxes had been cut than in those where taxes had not been cut.
Conclusion: Although smoking rates are declining in Canada, tobacco tax cuts appear to have slowed the rate of decline by inducing more nonsmokers to take up smoking and leading fewer smokers to quit.(p.187)

Hamilton, V.H., Levinton, C., St-Pierre, Y., Grimard, F. "The Effect of Tobacco Tax Cuts on Cigarette Smoking in Canada," *The Canadian Medical Association Journal* 1997; 156: 187-191.

165. 3. An immediate doubling of the current U.S. federal excise tax on cigarettes would deter approximately 1.5 million adults and 0.7 million teenagers from cigarette smoking.
When total cigarette consumption declines in response to an increase in retail cigarette prices, two different phenomena are taking place. First, continuing cigarette smokers may reduce the number of cigarettes consumed. Second, the number of cigarette smokers may decline. The latter phenomenon reflects quitting by adult smokers and, most importantly, deterrence of new smoking by teenagers. (p.118)

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4. An increase in the federal cigarette tax would not have unduly regressive consequences
An increase in cigarette taxes, it had been argued, is regressive because cigarette smokers come predominantly from lower income groups. The argument is incorrect for many reasons. First, the very poorest groups in the U.S. have lower smoking rates than the middle income groups. Second, although higher income men have lower smoking rates than middle income men, the prevalence of smoking actually increases with income among women. Third, many of the supposedly low income smokers are teenagers and young adults, who may be only temporarily poor. The younger age group, moreover, has the most to gain, with respect to the health consequences of smoking, from an increase in federal excise taxes.

Harris, J.E. "Increasing the Federal Excise Tax on Cigarettes," *Journal of Health Economics* 1982; 1: 117-120.

166. My main conclusions are as follows:

. . .

7. During the 1981-1986, per capita consumption of cigarettes declined 15 percent. The increase in cigarette prices was probably the main cause of the decline.
8. The decline in cigarette use reflected mostly a decrease in the number of cigarette smokers rather than in the amount smoked by continuing users. The evidence supports the hypothesis that price increase do not induce smokers to cut down on the number of cigarettes. Instead, they either induce existing smokers to quit or prevent potential smokers from starting.

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10. Who cuts down on cigarettes, who quits, and who fails to start are critical questions in assessing the quantitative effects of a cigarette tax increase on the health of the population. It is likely that, as a result of the price-induced decline in cigarette consumption during 1982-1985, about 100,000 additional persons will survive to age sixty-five. (p.88)

Harris, J.E., "The 1983 Increase in the Federal Cigarette Excise Tax," In: *Tax Policy and the Economy.* Vol. 1. Cambridge (MA): MIT Press, 1987: 87-111.

Tab

167. Figure 3 predicts that, with no Federal excise tax increase, the percentage of adults who smoke will drift downward from its 1993 level of 25.6 percent to a 1999 level of 22.0 percent. With a $1.76/pack tax increase, by contrast, the prevalence of smoking will fall to 18.6 percent by 1999. The lower prevalence in the tax-hike scenario translates into 6.7 million fewer adult cigarette smokers by 1999. (p.7 of internet printout)

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The dashed lines compare the predicted effects of two different scenarios: a baseline scenario with no further Federal tax hikes; and an alternative scenario in which the Federal tax rises from $0.24 to $2.00 per pack on January 1, 1995. Under the baseline no-tax scenario, consumption per smoker will drift slightly downward toward 28.1 cigarettes per day in 1999. Under the tax-hike scenario, consumption per smoker will fall to 23.9 cigarettes per day in 1999. (p.8 of internet printout)

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With no further Federal tax increase, per capita consumption will drift downward to 2,257 per adult in calendar 1999. With a $1.76/pack one time tax in 1995, per capita consumption will fall to 1,623 cigarette per adult – a level not seen in the United States since the mid 1930s. (p.9 of internet printout)

Harris, J.E. "A Working Model for Predicting the Consumption and Revenue Impacts of Large Increases in the U.S. Federal Cigarette Excise Tax." Massachusetts Institute of Technology and Massachusetts General Hospital. July 1, 1994. Downloaded July 27, 2000, http://www.mit.edu/people/jeffrey/workingmodel.html

168. We studied the relationship between current cigarette smoking and price among 34145 respondents, aged 15-29 years, to the 1992-1993 Tobacco Use Supplements to the Current Population Survey. The price elasticity of current smoking varied inversely with age: -0.831 (S.E. 0.402) for ages 15-17; -0.524 (S.E. 0.256) for ages 18-20; -0.370 (S.E. 0.188) for ages 21-23; -0.202 (S.E. 0.175) for ages 24-26; and -0.095 (S.E. 0.157) for ages 27-29. In response to higher prices, older youth were more likely to reduce the number of cigarettes smoked per day than to quit entirely. Among 15-17 year olds, smoking cigarettes 'some days' was more sensitive to price than smoking 'every day'. Cigarette smoking was inversely related to the prices of premium brands, but not discount brands. (p.81)

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Our findings suggest that nicotine addiction is acquired and reinforced over an extended time period, starting in the teenage years and continuing at least through the mid-to-late 20s. Each successive age group in our cross-sectional analysis gives us a different snapshot along this continuum of increasing addiction. In a young experimenter, whose 'stock of addictive capital' is relatively low, an increase in price can result in an abrupt, permanent shift to a new, non-smoking lifetime trajectory. As the smoker's addictive stock grows, however, an increase in price is more likely to cause only a marginal reduction in the number smoked. At the youngest ages, the impact of a change in price may also be amplified by bandwagon effects. (pp.83-84)

Harris, J.E., Chan, S.W. "The Continuum-of-Addiction: Cigarette Smoking in Relation to Price Among Americans Aged 15-29," *Health Economics* 1999; 8(1): 81-86.

169. During 1990-1992, taxable per capita consumption of cigarettes by adults declined 6.4% in Massachusetts, 11.0% in California, and 5.8% in the 48 remaining states and the District of

Tab

Columbia combined (Table 1). In Massachusetts, from 1992 (the year before implementation of the petition) to 1996, taxable per capita consumption declined by 19.7% (from 117 packs to 94 packs) (Table 1); in California and the remaining states, per capita consumption declined by 15.8% and 6.1%, respectively. (p.967)

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Increases in the price of cigarettes can reduce per capita consumption and the prevalence of smoking. In Massachusetts, however, the tax-induced increase in cigarette price was soon offset b coincidental national, industrywide price reductions that began during the spring of 1993. While real cigarette prices returned to pre-1993 levels, per capita consumption in Massachusetts continued to decline. This finding suggests that a tax increase combined with an antismoking campaign can be more effective in reducing per capita consumption than a tax increase alone (p.970; this quotation from p.970 is from an Editorial Note accompanying the article)

Harris, J.E., Connolly, G.N., Brooks, D., Davis, B. "Cigarette Smoking Before and After an Excise Tax Increase and an Antismoking Campaign: Massachusetts, 1990-1996," *Morbidity and Mortality Weekly Report* 1996; 45(44): 966-970.

170. Action Step:

Increase the cost of tobacco.

Tax policy is the most effective way to address tobacco consumption. (p.24)

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Recommendation 2:

i) Increase provincial cigarette taxes (especially on Roll Your Own).

ii) Lobby the federal government to improve the Federal Export Tax on tobacco. (p.26)

Heart and Stroke Foundation of B.C. & Yukon; Canadian Cancer Society, B.C. and Yukon Division; B.C. Lung Association. "B.C. – Leading the Pack on Tobacco: A Plan to Put B.C. at the forefront of tobacco control in Canada; A Submission to the Government of British Columbia" 1996.

171. Another part of the coalition's strategy highlighted California's Proposition 99, which led to a drop in smoking by twice the national average since its 25-cent cigarette tax had gone into effect in 1989. A similar drop in Massachusetts was projected to result in 80 000 fewer smokers in the first year alone. (p.970)

Heiser, P.F., Begay, M.E. "The Campaign to Raise the Tobacco Tax in Massachusetts," *American Journal of Public Health* 1997; 87(6): 968-973.

172. The findings from this study show that Proposition 99 was effective in reducing cigarette consumption. (p.32)

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To sustain the effect of cigarette taxes, it would be appropriate to increase the cigarette tax periodically, or to assess them on an ad valorem basis. (p.33)

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To achieve greater results in reducing cigarette consumption, the Federal government should take a more aggressive role to impose additional Federal tax on cigarettes. (p.33)

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In 1988, California voters enacted Proposition 99, increasing the tax on cigarettes by 25 cents per pack, effective January 1989. Monthly sales data reported by the California State Board of Equalization between 1984 and 1991, adjusted for seasonal variation and time

Tab

trend, show that consumption of cigarettes in January 1989 was about 25 percent less than would have been expected in the absence of the tax. By December 1989 consumption was reduced to 9.5 percent below the pre-Proposition trend, and amount sustained throughout 1991. Additional taxation and a different form of taxation on cigarettes may further be considered. (p.36)

Hu, T.-W., Bai, J., Keeler, T.E., Barnett, P.G., Sung, H.-Y., "The Impact of California Proposition 99, A Major Anti-Smoking Law, on Cigarette Consumption," *Journal of Public Health Policy*; 1994; 15(1): 26-36.

173. The higher prices from Proposition 99 reduced cigarette consumption by 8-10% in the short run and 10-13% in the long run. The media campaign had a significant effect in further reducing cigarette consumption, though the effects of that campaign are substantially weaker than those of the tax increase. (p.S34)

Hu, T.-W., Keeler, T.E., Sung, H.-Y., Barnett, P.G. "The Impact of California Anti-Smoking Legislation on Cigarette Sales, Consumption, and Prices," *Tobacco Control* 1995; 4 (suppl 1): S34-S38.

174. Conclusions. Both taxation and anti-smoking media campaigns are effective means of reducing cigarette consumption. The strength of those effects, however, is influenced by the magnitude of the taxes and the amount of media campaign expenditures. (p.1218)

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The time-series analysis, based on cigarette sales data in California between 1989 and 1992, indicates that both the 25-cent-per-pack state tax increase and the anti-smoking media campaign were statistically significant in reducing cigarette consumption. As measured by both relative elasticities and absolute effects, the increase in the state tax reduced cigarette consumption more than the media campaign did. (p.1222)

Hu, T.-W., Sung, H.-Y., Keller, T.E. "Reducing Cigarette Consumption in California: Tobacco Taxes vs. an Anti-Smoking Media Campaign," *American Journal of Public Health* 1995; 85(9): 1218-22.

175. The price of tobacco is perhaps the single largest factor in influencing short term consumption patterns. Even more important, price has been shown to play a very large role in determining how many young people will start smoking, thus profoundly influencing long-term consumption trends. The decisions governments make with respect to tobacco taxation are never "neutral", as anything that increases or decreases the affordability of tobacco will be reflected in total consumption. The UICC recommends that taxes on all tobacco products be increased regularly and significantly. (p.1)

International Union Against Cancer, "Tobacco Taxation and Price Policies" UICC Tobacco Control Fact Sheet 4. March 1993.

176. Based on the review of New Zealand tobacco taxation and control measures, the most important determinants of tobacco consumption are the price of tobacco products relative to other products and the average disposable income of consumers. If consumer purchasing power increases, either because of the price of tobacco falls relative to other goods and services or because of an increase in real earnings, then tobacco consumption will increase. The evidence of this relationship is strong. (p.42)

James, D. "A Review of Tobacco Taxation" Prepared for the Public Health

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Commission. New Zealand Institute of Economic Research (inc.). February 28, 1995. Wellington, New Zealand.

177. Tax increases are the single most effective intervention to reduce demand for tobacco. Our review of numerous studies from high income countries and several studies from low income and middle income countries indicates that higher tobacco prices significantly and consistently reduce tobacco use. A price increase of 10% would reduce smoking by about 4% in high income countries and by about 8% in low income and middle income countries. The evidence indicates that young people, people on low incomes, and those with less education are more responsive to price changes. (p.359)

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It is important to note the experience of Canada, which reduced its tax rates as an attempt to counter smuggling. The result was that consumption rose, especially among youths, and revenues fell. (p.361)

Jha, P., Chaloupka, F.J., "The Economics of Global Tobacco Control," *British Medical Journal* 2000; 321: 358-61.

178. Evidence from countries at all income levels shows that price increases on cigarettes are highly effective in reducing demand. Higher taxes induce some smokers to quit and deter others from starting. They also reduce the number of ex-smokers who return to cigarettes and reduce consumption among continuing smokers. On average, a price rise of 10 percent on a pack of cigarettes would be expected to reduce demand for cigarettes in the short term by about 4 percent in high-income countries and by about 8 percent in low-and middle-income countries, where lower incomes tend to make people more responsive to price changes. Long-run price responsiveness is estimated to be twice as high. Tax increases that would raise the real price of cigarettes by 10 percent worldwide would cause at least 40 million smokers alive in 1995 to quit, thus preventing a minimum of 10 million tobacco-related deaths. The modeling assumptions on which this result is based are deliberately conservative, and these figures are therefore minimum estimates. (p.5 of internet version)

Jha, P., de Beyer, J., Heller, P.S. "Tobacco Control - Death and Taxes: Economics of Tobacco Control," *Finance and Development* 1999; 36(4), downloaded August 21, 2000, http://www.img.org/external/pubs/ft/fandd/1999/12/jha.htm.

179. At 1986 values the estimated price elasticity of per capita demand is –0.562. This figure is towards the upper end of estimates from previous studies. . . . However these studies are based on samples which do not include the years 1981 to 1986, a period which, as a result of large tax increases, has seen an unusual degree of volatility in cigarette prices.

. . .

On the basis of these estimates, it appears that participation may be less sensitive to price changes than smokers' demand, with an estimated elasticity of participation of –0.192 and of demand of –0.370. In other words a 10 percent increases in the price of cigarettes would be expected to reduce per capita demand by around 5.6 percent, and of this 1.9 percent would be a reduction in participation while 3.7 percent would be due to the fall in smokers' demand. (pp.138-139)

Jones, A., "The UK Demand for Cigarettes 1954-1986, A Double-Hurdle Approach," *Journal of Health Economics* 1989;8:133-141.

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180. To give some idea of the orders of magnitude involved, with a price elasticity of –0.18, a 10p increase in duty fully passed on to the consumer would reduce consumption by 1.8%, or by 2.5 cigarettes per week for a smoker on 20-a-day. Even on the higher official estimate the reduction in consumption would be around 4.%, or 6 cigarettes per week. (p.1231)

Jones, A., Posnett, J., "The Revenue and Welfare Effects of Cigarette Taxes," *Applied Economics* 1988;20:1223-1232.

181. Conclusions

It is clear from existing studies, that price has a significant impact on the consumption of tobacco products, in particular amongst young people.

A coherent tobacco price policy which would ensure a programme of regular price increases (superior to the rate of inflation), should therefore be a major component of any tobacco control policy. (p.7)

Joossens, L., Naett, C., Howie, C. "Taxes on Tobacco Products: A Health Issue" Brussels: European Bureau for Action on Smoking Prevention, December 1992.

182. Results. In California, a $0.50 tax increase and price elasticity of –0.40 would result in about 8389 QALYs [quality adjusted life years] (95% confidence interval [CI]=4629, 12113) saved the first year. Greater benefits would accrue each year until a steady state was reached after 75 years, when 52136 QALYs (95% CI=38297, 66262) would accrue each year. Higher taxes would produce even greater health benefits.

Conclusions. A tobacco excise tax may be among a few policy options that will enhance a population's health status while making revenues available to government.(p.239)

Kaplan, R.M., Ake, C.F., Emery, S.L., Navarro, A.M. "Simulated Effect of Tobacco Tax Variation on Population Health in California" *American Journal of Public Health* 2001; 91(2): 239-244.

183. This work analyses the effects of prices, taxes, income, and anti-smoking regulations on the consumption of cigarettes (a 25-cent-per-pack state increase in 1989 enhances the usefulness of the exercise). Analysis is based on monthly time-series data for 1980 through 1990. Results show a price elasticity of demand for cigarettes in the short run of –0.3 to –0.5 at mean data values, and -0.5 to -0.6 in the long run. We find at least some support for two further hypotheses: that antismoking regulations reduce cigarette consumption, and that consumers behave consistently with the model of rational addiction. (p.1)

Keeler, T.E., Hu, T.-W., Barnett, P.G., Manning, W.G. "Taxation, Regulation, and Addiction: A Demand Function for Cigarettes Based on Time-Series Evidence," *Journal of Health Economics* 1993; 12: 1-18.

184. This study analyzes the interactive effects of oligopoly pricing, state taxation, and anti-smoking regulations on retail cigarette prices by state, using panel data for the 50 US states between 1960 and 1990. The results indicate that cigarette producers do price-discriminate by state, though the effect is not large relative to the final retail price. There are two further results: (1) state taxes are more than passed on – a 1-cent state tax increase results in a price increase of 1.11 cents, and (2) sellers offset state and local anti-smoking laws with lower prices, thereby blunting effects of the regulations. (p.499)

Keeler, T.E., Hu, T.-W., Barnett, P.G., Manning, W.G., Sung, H. "Do Cigarette

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Producers Price-Discriminate by State? An Empirical Analysis of Local Cigarette Pricing and Taxation," *Journal of Health Economics* 1996; 15: 499-512.

185. With these lessons in mind, the ACS [American Cancer Society] Tobacco Control Task Force favoured a tax initiative for three reasons.
(1) Economic analyses have documented price elasticity, that is, increasing the price of cigarettes led to decreased cigarette consumption (a sales drop of 0.75 packs per capita for each 1-cent increase in cigarette taxes). Some studies indicate that teenagers are at least as cost sensitive as adults, and perhaps more so.
(2) The tax would generate more than $100 million dollars annually for a new Health Protection Fund to create statewide tobacco control programmes (including an anti-smoking media campaign and health education for schoolchildren).
(3) Over the years, the traditional state legislative process had rejected proposals to raise the cigarette excise tax. In Massachusetts, stable excise taxes for almost a decade left room for upward movement. (p.221)

Koh, H.K. "An Analysis of the Successful 1992 Massachusetts Tobacco Tax Initiative," *Tobacco Control* 1996; 5: 220-225.

186. A cigarette tax is different because it helps almost everyone. A substantial cigarette tax would benefit not only the entire nation by helping to provide more accessible health care at a lower cost, but it would also benefit particular groups; smokers would benefit because it would help them to quit; nonsmokers would benefit because the air they breathe would have less harmful smoke; children would benefit because fewer kids would get hooked on cigarettes; and – if the tax is done right – even tobacco farmers could benefit. The only real losers would be the tobacco industry, which has made its profits by lying to the American people about the dangers of smoking. (p.3)

Koop, C.E. "A Tax That's Good for You" *World Smoking and Health* 1994; 19(1): 3.

187. It's well-known that though price hikes can reduce cigarette use, the impact is less than proportionate: Economists say the price elasticity of demand is about 0.4, which means a 10% rise in the real price of smokers induces a 4% drop in consumption.
. . .
In the early 1980s, Canada's federal and provincial governments launched an assault on smoking with outsize tax increases that boosted retail prices by 152% in real terms from 1982 to 1992.
The results were gratifying: In that 10-year period, as cigarette-tax revenues nationwide nearly quadrupled, per capita consumption fell precipitously- 38% overall and nearly 60% among teenagers.

Koretz, G. "Big U.S. Tax Hike Should Hasten Smoking's Decline. . .and Might Stiffen Canadian Puffers' Resolve to Quit, Too" *Business Week*, May 30, 1994, p.26.

188. In 1989, we had success not only with the federal government but with many provincial governments. The net result is that there will be about 8% fewer smokers in Canada than would otherwise have been the case. This represents about 400,000 fewer people smoking

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and will eventually translate into about 100,000 fewer tobacco-related deaths. The project cost is less than one dollar per tobacco-related death prevented. In numbers of future cancer cases alone, this is clearly a breakthrough in prevention. (p.15)

Kyle, K. "Tax Increases Make Good Preventive Medicine" *World Smoking and Health* 1990; 15(3): 14-16.

189. This paper has investigated the relative ability of two anti-smoking policies, taxes and regulation, in inducing cigarette demand reductions and in providing incentives to stop smoking (or not to start to). The analysis was based on Canadian data at the provincial level for the period 1980-1995. Our results showed that cigarette demand responds to taxes (elasticity of –0.28), but not to regulation, while the converse is true for the proportion of smokers in the population. This suggests that both policies are acting in a complementary fashion to influence the incidence of smoking. (p.88)

Lanoie, P., Leclair, P. "Taxation or Regulation: Looking for a Good Anti-Smoking Policy," *Economic Letters* 1998; 58: 85-89.

190. Price on these results appears to be the most powerful variable which governments can influence. The long-run price elasticity of –0.41 is close to the elasticities reported from many annual studies and means that when price rises 10 percent, sales fall by 4 percent, other factors being equal. (pp.10-11)

Laugesen, M., Meads, C. "Advertising, Price, Income and Publicity Effects on Weekly Sales in New Zealand Supermarkets," Wellington, New Zealand. 1990.

191. Newspaper publicity about smoking and real cigarette price were negatively associated, and real disposable income positively associated with the amount smoked by those 25 and over. (p. 775)

Laugesen, M., Meads, C., "Cigarette Advertising, Price, Income, Publicity and Smoking Prevalence in Youth Versus Older Age Groups, New Zealand, 1982-89," In: Durston, B., Jamrozik, K., eds. *Tobacco & Health 1990: The Global War. Proceedings of the Seventh World Conference on Tobacco and Health.* 1st-5th April 1990, Perth, Western Australia, Australia. 1990. pp.775-777.

192. The central point emerging from this study is that both Federal and State governments can use the price variable as a control measure for reducing cigarette consumption. With an estimated price elasticity of -.81, cigarette demand is sufficiently elastic to respond to sharp price increases. For example, if the average price of cigarettes is increased by 20 per cent, per capita consumption will decline by approximately 41 packs - a significant response by any standard. (p.33)

Laughhunn, D.J., Lyon, H.L., "The Feasibility of Tax Induced Price Increases as a Deterrent to Cigarette Consumption," *Journal of Business Administration* 1971;3(1):27-35.

193. Tobacco taxes are a key policy tool in government strategies to reduce the demand for tobacco products. (p.600)

LeClair, K., "Taxing Tobacco: Canada's Recent Experience," In: American Cancer Society, American Medical Association, The Robert Wood Johnson

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Foundation. *11th World Conference on Tobacco OR Health. Promoting a Future Without Tobacco. Abstracts. Vol. 3.* August, 6-11, 2000. Chicago, Illinois, USA, p.600.

194. The price elasticity works out at –0.8, i.e. an increase in the (nominal) cigarette price of one percent leads to an 0.8 p. cent reduction in consumption and vice versa, other things being equal. (pp.360-361)

. . .

Conclusions

Our study suggests that cigarette consumption can effectively be influenced by tobacco tax and, above all, by anti-smoking campaigns. (p.361)

Leu, R. "The Effects of Cigarette Price and Anti-Smoking Publicity on Cigarette Consumption in Switzerland" *Revue d'Épidemiologie et de Santé Publique* 1979; 27: 359-362.

195. Results. The model predicts that sustained tax increases have the potential to substantially reduce the number of smokers and the number of premature deaths, with the effects growing over time. Indexing taxes to inflation stems erosion of the tax effect.

Conclusions. Tax hikes have the ability to substantially affect smoking rates in the near term. These effects grow over time and lead to substantial savings in lives and health care costs. (p.279)

Levy, D.T., Cummings, K.M., Hyland, A. "Increasing Taxes as a Strategy to Reduce Cigarette Use and Deaths: Results of a Simulation Model" *Preventive Medicine* 2000; 31: 279-286.

196. A primary benefit of tobacco taxes is that their administrative cost is low relative to the revenues they generate. They are easy to collect because during manufacturing most tobacco passes through a limited number of physical locations.

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However, in more developed countries it appears that teenagers seen to be most sensitive to a rise in price of tobacco products. This sensitivity is probably due to the fact that teenagers are not usually habitual smokers and that they generally have less disposable income than older smokers. Accordingly, it is possible that price elasticities in developing countries where income is low and there are fewer established smokers would be better approximated by the estimates for teenagers rather than those for adults in developed countries. (p.787)

Lewit, E.M., "Economics of Tobacco in Developing Countries: Telling It Like It Is," In: Durston, B., Jamrozik, K., eds. *Tobacco & Health 1990: The Global War. Proceedings of the Seventh World Conference on Tobacco and Health.* 1st-5th April 1990, Perth, Western Australia, Australia. 1990. pp.785-787.

197. An estimated 100,000 additional persons may live to the age of 65 as a result of doubling the Federal cigarette tax in 1983. (p.1217)

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Since excise taxes will tend to increase the price of cigarettes, fluctuations in excise tax rates should influence the demand for cigarettes and excise taxes increases should reduce smoking. . . . Numerous attempts have been made over the years to measure the price elasticity of demand for cigarettes, with estimates ranging from –0.4 to –1.3. Miller (1982)

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suggested that –0.7 was the midpoint of recent studies and noted that the Tobacco Institute used that figure for its analyses of cigarette tax effects. (p.1221)

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In addition, the Omnibus Budget Reconciliation Act of 1985 imposed taxes of $0.24 per pound on snuff and $0.08 per pound on chewing tobacco. States also increased their taxation of smokeless tobacco. In 1964, only fourteen states taxed smokeless tobacco. By 1987, this number had nearly doubled to 27 (Tobacco Institute, 1989). As a result of the increased regulation, adverse publicity and tax induced price increases, consumption of smokeless tobacco has declined since 1985 after increasing steadily during the first half of the decade. (p.1232).

Lewit, E.M. "U.S. Tobacco Taxes: Behavioural Effects and Policy Implications," *British Journal of Addiction* 1989; 84: 1217-1235.

198. Our empirical results have indicated (1) that the price elasticity of demand for cigarettes is –0.42, (2) that the decision to begin smoking regularly by males less than 25 years old is price elastic, and (3) that price effects appear to be larger for males than females. These results have implications for any future attempts by the Federal government to influence cigarette demand through excise tax policy. The short-run impact of an excise tax increase would be small. For example, if the federal excise tax was doubled to 16 cents a pack, and if the tax increase was completely passed on to the consumer, then the average retail price of cigarettes would increase by about 11.5% (using the 1981 average retail price as a reference). Accordingly, applying our estimated price elasticity of –0.42, cigarette consumption would fall by about 4.8%. The fall-off in demand would result from an approximate 3% decline in smoking participation and 1.2% decline in the quantity of cigarettes smoked by smokers. In the long run, however, the impact of such a tax increase could be much more substantial. Our results imply that a doubling of the excise tax would lead to a 16% decline in smoking participation by males 20-25 years old. Furthermore, it may be that over time the response by young females to price changes could approach that of young males. Thus an excise tax increase, if maintained in real terms, might continue to discourage smoking participation by successive generations of teenagers and young adults and gradually impact the smoking levels of older age groups as the smoking-discouraged cohorts move through the age spectrum. (pp.142-143)

Lewit, E.M., Coate, D. "The Potential for Using Excise Taxes to Reduce Smoking," *Journal of Health Economics* 1982; 1(2): 121-45.

199. Teenage price elasticities of demand for cigarettes are large. The smoking participation elasticity equals –1.2, and the quantity smoked elasticity equals –1.4. This result is consistent with Lewit and Coate's finding that smoking by young adults ages twenty through twenty-four is much more responsive to price than smoking by older adults. It follows that, if future reductions in youth smoking are desired, an increase in the federal excise tax is a potent policy to accomplish this goal. . . . Given the evidence that individuals are considerably less likely to initiate smoking after age twenty-five, it is quite possible that the cohort of young smokers who never began to smoke as a result of the tax increase would never become regular smokers. As a consequence, over a period of several decades, aggregate smoking and its associated detrimental health effects would decline substantially. (p.568)

Lewit, E.M., Coate, D., Grossman, M. "The Effects of Government Regulation on Teenage Smoking" *Journal of Law and Economics* 1981; 24: 545-569.

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200. Both smoking participation and the intent to smoke were related to differences in cigarette prices, with estimated price elasticities of –0.87 and –0.95 respectively. Boys were far more sensitive to price than girls with respect to smoking participation (elasticities of –1.51 and –0.32, respectively); however, the effect of price on the intent to smoke was similar for boys and girls. (p.S17)

Lewit, E.M., Hyland, A., Kerrebrock, N., Cummings, K.M. "Price, Public Policy, and Smoking in Young People," *Tobacco Control* 1997; 6 (suppl 2): S17-S24.

201. Our analysis of the COMMIT youth data to date suggests that smoking by youth in the communities studied is quite responsive to differences in retail cigarette prices. After controlling for differences in age, ethnic and racial group, gender and parental smoking behavior, we find that the likelihood of a ninth grader's smoking cigarettes is reduced in markets where prices are high. Our preliminary estimates of the price elasticity of smoking participation, which range from –0.7 to –1.20 at the means of our sample appear to be large enough to have policy significance. (pp.219-220)

Lewit, E.M., Kerrebrock, N., Cummings, M., "The Impact of Taxes and Regulation on the Use of Tobacco Products by Teenagers," In: Slama, K., ed. *Tobacco and Health: Proceedings from the 9th World Conference on Tobacco and Health.* (New York: Plenum Press, 1995), pp.217-220.

202. There is an increasing body of evidence suggesting that youth smokers do respond to price increases. (p.596)

Liang, L., Chaloupka, F.J, Grossman, M., "The Differential Effects of Prices on Light and Heavy Youth Smokers," In: American Cancer Society, American Medical Association, The Robert Wood Johnson Foundation. *11th World Conference on Tobacco OR Health. Promoting a Future Without Tobacco. Abstracts. Vol. 3.* August, 6-11, 2000. Chicago, Illinois, USA, p.596.

203. Price, income and smoking

Whereas tobacco consumption is negatively price elastic (i.e. when prices go up, consumption comes down), it is positively income elastic. In other words, if national income per head increases and prices do not then, other things being equal, tobacco becomes more affordable and consumption rises. It has been calculated, for example, that every one per cent increase in national income leads to a rise in tobacco consumption of between 0.3 and 0.6%.

This means that to keep tobacco consumption from rising, tobacco taxes must be used to make sure prices at least keep pace with increases in national income. (p.8)

. . .

The evidence is clear: increasing tobacco prices reduces consumption. (p.10)

Longfield, J. "Tobacco Taxes in the European Union: How to Make Them Work for Health" London: Health Education Authority, International Union Against Cancer, World Health Organization Regional Office for Europe, 1994.

204. The retail price elasticity of demand for cigarettes is a particularly important parameter for social decisions at this time. Results from prior cigarette elasticity studies vary widely,

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ranging from –0.10 to –1.48. Temporal changes may explain some of this variation, but differences in research methods are more important. The quasi-experimental approach used in this article yields an elasticity estimate (-0.511) . . .

. . .

At the outset it was noted that price changes might be considered as a device to reduce smoking. An elasticity of –0.50 or slightly more suggests that price is a not insignificant control variable. It is simply not true that "people will go on smoking no matter what it costs them." If the elasticity estimates can be extrapolated far beyond the range of observation, doubling price would halve sales in the first year, a very large effect by any standard. (p.894)

Lyon, H.L., Simon, J.L., "Price Elasticity of the Demand for Cigarettes in the United States," *American Journal of Agricultural Economics* 1968;50:888-895.

205. The coefficients of partial regression of cigarette purchases (or sales) on retail cigarette prices yielded by this cross-section analysis (reported in Table A above) are statistically significant at the 5-percent level only for the years 1947 through 1949, the values for 1950 and 1951 being clearly nonsignificant. The partial regression coefficients imply the following coefficients of price elasticity of sales of cigarettes in state-wide markets at the mean prices: -1.48 (1947); -1.44 (1948); -1.08 (1949); -0.3 (1950); and –0.38 (1951). The large magnitudes indicated for price elasticity of sales in state markets in the years 1947 through 1949 may be due in large part to the following considerations: (1) the greater frequency of imposition of new state cigarette taxes and increases in existing state cigarette taxes during the years 1947 through 1949; and evasion of state cigarette taxes, before the enactment of the Jenkins Act in 1949. If this interpretation is correct, only the figures for the years 1950 and 1951 would be relevant to the question of the price elasticity of the rate of sales of cigarettes in state-wide markets during a future period of reasonably full employment. The coefficients of partial regression of cigarette purchases on retail cigarette prices for these two years are non-significant by the usual statistical tests, although these values are quite consistent with the results of the two recent time-series analyses of demand for cigarettes. (pp.703-704)

Maier, F.H., "Consumer Demand for Cigarettes Estimated from State Data," *Journal of Farm Economics* 1955;37:690-704.

206. Our new anti-tobacco strategy includes a number of important tax measures – all designed to support the Government's health objectives and reduce tobacco consumption – particularly among young Canadians.

First, as of midnight tonight, there will be a combined federal-provincial tax increase of $4 per carton in New Brunswick, Prince Edward Island, Nova Scotia, Ontario and Quebec.

Second, there will be a corresponding federal excise tax increase of $1 per 200 grams of fine-cut tobacco and $1 per carton of tobacco sticks. This measure will apply in all provinces and territories.

Third, the tobacco manufacturers' surtax will be increased to 50 per cent from 40 per cent.

These tax increases are part of a new tobacco tax structure being put in place to reduce smoking and the incentive to smuggle. In addition, these changes should enable us to increase tobacco taxes further in the future. (p.1)

Martin, P. "Statement by the Honourable Paul Martin, Minister of Finance for Canada on the Government's Comprehensive Strategy to Discourage Smoking" April 5, 2001. Downloaded September 23, 2001, www.fin.gc.ca/news/01-040e.html

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207. According to survey results, more than 88,000 Massachusetts adults have quit smoking since January 1, 1993. People quit for many reasons. When asked whether the price increase played any role, forty-four percent, or over 38,000 people said that the tax increase was at least partially responsible for their decision to quit. (p.3)

Massachusetts Department of Public Health. "1993 Massachusetts Tobacco Survey. The Tobacco Tax: Reactions from Massachusetts Citizens" Boston, MA. 1994.

208. Results. From 1955 through 1994, increases in state taxes were effective in reducing cigarette use. Federal tax increases, however, appear to have been more effective. This difference is partly the result of the "bootlegging" of cigarettes across state lines and the size of the increases in the federal tax. . . .

Conclusions. Increases of taxes on cigarettes are associated with declines in the consumption of tobacco. Because of inflation, increased health concerns, and the declining percentage of smokers, however, large reductions in consumption require large tax increases. (p.1126)

Meier, K., Licari, M. "The Effect of Cigarette Taxes on Cigarette Consumption, 1955 through 1994," *American Journal of Public Health* 1997; 87(7): 1126-1130.

209. Conclusion: When the price rise for hand-rolling tobacco is greater than the price rise for manufactured cigarettes, the fall in manufactured cigarette consumption is accompanied by a fall in roll-your-own use. Cigarette smokers are deterred from switching to hand-rolled cigarettes instead of stopping smoking. (p.214)

. . .

It is evident from our analysis that, unless the price of hand-rolling tobacco is on a par with that of manufactured cigarettes in The Netherlands and, by implication, in all European countries, substitution of a different form of tobacco will, in effect, reduce the impact of tax-induced price rises. (p.219)

Mindell, J.S., Whynes, D.K. "Cigarette Consumption in The Netherlands 1970-1985: Does Tax Policy Encourage the Use of Hand-Rolling Tobacco?" *European Journal of Public Health* 2000; 10: 214-219.

210. An extensive literature on the demand for cigarettes reveals a statistically significant, although inelastic, negative relationship between cigarette consumption and price (or, in some formulations, tobacco taxes). (p.415)

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Implications and conclusions

This article has provided direct evidence of the effects of tobacco taxes on mortality rates. The benefits in terms of lives extended due to tobacco tax increases can be substantial, due to the effects of taxes on the relatively high-incidence diseases of the cardiovascular system and respiratory cancer. A 10% increase in the tax rate is estimated here to save about 6,000 lives per year or, more accurately, to extend them. (p.427)

Moore, M.J. "Death and Tobacco Taxes," *RAND Journal of Economics* 1996; 27(2): 415-428.

211. An increase in tobacco prices brought about by taxation promises to reduce the deleterious

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effects of consumption and has the potential to provide a revenue source for other tobacco control initiatives. The change in product demand brought about by price change, known as price elasticity, is defined as the percentage change in quantity demanded due to a one percent change in price. There is general consensus that cigarettes have an elasticity of demand in the neighbourhood of –0.4 in the general population. This relatively low value is likely due to the addictive nature of the product. There is evidence, however, of higher price elasticities in younger populations and in lower socio-economic groups. (p.314)

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This report described 10 years of variation in cigarette prices, consumption and revenues in Alberta, a province which provides a unique longitudinal view of these measures. There has been no effort to control for effects of legislative or educational approaches to tobacco control and, as such, the report cannot make causal conclusions regarding the effects of pricing, as influenced by taxation, on consumption. The period studies showed a 78% increase in price and a corresponding 43% decrease in per capita consumption. This equates to a price elasticity of –0.5, close to that of many industrialized nations. The largest declines in consumption were related to the largest price increases. Since provincial and federal taxes made up, on average, 74% of the total carton price, taxation changes exerted the main effect on the retail price changes. Future tax increases can be expected to have a moderate influence on consumption while continuing to increase revenue for government, revenue which could potentially be used to assist other tobacco control initiatives. (p.315)

Mummery, W.K., Hagen, L.C. "Tobacco Pricing, Taxation, Consumption and Revenue: Alberta 1985-1995." *Canadian Journal of Public Health* 1996; 87(5):314-316.

212. Nobel prize winner Gary Becker and his colleague Michael Grossman estimate that if the federal cigarette tax were increased to 95 cents, smoking would be cut in half. At a tax of $2.24, cigarette consumption would go down by 73 percent. It would take several years to get the full effect of the drop-off, as some people smoked less, some quit smoking altogether and teenagers, who are especially sensitive to price, decided not to become smokers. (pp.2-3)

National Center for Policy Analysis. "Do Higher Cigarette Taxes Make Sense?" Brief Analysis No.123. August 16, 1994.

213. While specific measures have varied somewhat, Canadian studies have estimated price elasticity of demand for total consumption among the population to be in the range of –0.3 to –0.4 in the short-run, and –0.57 to-1.5 in the long-run. In other words, over the short-run, every 10% increase in price will result in a 3 to 4% decline in total consumption. Total consumption of tobacco products (and smoking behaviour) is based on prevalence, or the percentage of people who smoke, and the quantity smoked.

Several studies have examined price elasticity among youth. Most of these studies have been carried out in the U.S.; only one Canadian study on youth has been conducted. This body of literature provides evidence that increases in the price of tobacco would decrease total consumption. The studies further indicate that the greatest impact would be upon the number of teens who smoke rather than upon the quantity of cigarettes consumed. (p.1)

National Clearinghouse on Tobacco and Health. "Effective Interventions For Youth: Price and Affordability." Fact Sheet. Ottawa, Ontario. March 1996.

214. Tobacco tax policy has arguably been the most successful public health policy in the history of Canada. (p.14)

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Non-Smokers' Rights Association. "Tobacco Tax Policy: Issues and Directions for Canada. A brief to The Honourable Paul Martin Jr., Minister of Finance" On behalf of the National Campaign for Action on Tobacco. November 4, 1993.

215. The Ministry of Revenue has simply to look at its own figures to realize that indeed Québec's fiscal policy on tobacco over the past decade has afforded and still affords the government impressive results in terms of much needed revenue while lowering consumption of a product which is considered to be the number one cause of preventable death in Québec. (p.4)

Non-Smokers' Rights Association. "Fiscal Policy on Tobacco in Québec: Impact on revenues and consumption over the past decade; A brief to the Minister of Finance, Monique Gagnon-Tremblay" November 29, 1993.

216. A previously unreleased federal study predicts that tens of thousands of Canadians will die premature deaths as a result of the February 1994 tobacco tax rollbacks. The June 1994 study was obtained on January 26, 1995 by the Non-Smokers' Rights Association under the *Access to Information Act*. Dependent upon the size of the decrease in the price of tobacco, this study predicts up to 40,000 tobacco-caused deaths in the future from among those in the adolescent population who become addicted to tobacco over the next 5 years. These deaths, the Association stressed, are in addition to the tobacco deaths which would have been expected from Canada's adolescent population had cigarette prices remained at January 1994 levels. The report from the Laboratory Centre for Disease Control concludes that "the health consequences of the recent tax decrease will continue for decades." (p.1)

Non-Smokers' Rights Association. "Health Canada Study Predicts Thousands of Deaths From Tax Rollbacks" January 31, 1995 [news release].

217. In the case of Canada, it appears that the rapid increases in tobacco taxation during the 1980's led to price increases which reduced consumption well beyond that which would have otherwise been achieved. (p.6)

Non-Smokers' Rights Association, Smoking and Health Action Foundation [Canada]. "The Smuggling of Tobacco Products: Lessons from Canada" Ottawa, Ontario. July 1994.

218. Data from the September 1985 Current Population Survey are used to estimate the effects of tobacco excise taxes and state laws restricting smoking in public places on the likelihood of current use of cigarettes or smokeless tobacco (ST) products (moist snuff or chewing tobacco) among males in the USA. The results indicate that higher ST excise tax rates are associated with a reduced probability of ST use, whereas higher cigarette excise tax rates are associated with an increased probability of ST use, holding other factors constant. (p.525)

Ohsfeldt, R.L., Boyle, R.G., Capilouto, E. "Effects of Tobacco Excise Taxes on the Use of Smokeless Tobacco Products in the USA," *Health Economics* 1997; 6:525-531.

219. This paper reviews the growing literature that applies economic principles to the analysis of substance abuse. Specifically we review the impact of prices and public policies on the demands for tobacco, alcohol and illicit drugs. The findings from these studies clearly

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demonstrate that even addictive behaviors are sensitive to changes in the price of substances being abused. When the full price of the addictive good rises, consumption of that good falls even among abusers. Therefore, public policies that raise the full price of a drug to a consumer, particularly youth, are likely to result in long run reductions in rates of addiction.

Pacula, R.L. (Associate Economist, RAND Corporation; Faculty Research Fellow, Health Economics Program, National Bureau of Economic Research), Chaloupka, F.J. (Professor, Department of Economics, University of Illinois at Chicago; Research Associate, Health Economics Program, National Bureau of Economic Research; Director, ImpacTeen: A Policy Research Partnership to Reduce Youth Substance Use. "The Effects of Macro-level Interventions on Addictive Behavior" December 1999.

220. 1. The price of tobacco, in particularly the price of cigarettes, is the most important single determinant for the demand for tobacco products. By controlling the price of cigarettes it is possible to regulate the demand for both cigarettes and pipe tobacco. A 1% increase in the real price of cigarettes tends to reduce its demand by 0.5% and increase the demand for pipe tobacco 2.1%, other things are equal.
2. The most important feature of the cigarette demand is its asymmetric response to its price. The demand for cigarettes is twice as sensitive to falling prices (elasticity –0.94) than to rising prices (elasticity –0.49). A 3% fall in demand requires a 6% increase in the real price, whereas to boost demand by the same amount it is necessary to let the real price to fall only 3%.
3. The demand for cigarettes is also responsive to changes in real disposable income. A 2.2% growth in real income will increase demand by 1%. (p.1189)

Pekurinen, M. "The Demand for Tobacco Products in Finland" *British Journal of Addiction* 1989; 84: 1183-1192.

221. State cigarette tax increases were associated with an average decline in cigarette consumption of three cigarette packs per capita (about 2.4%). Larger tax increases were associated with larger declines in consumption. Raising state cigarette taxes appears to be an effective public health intervention that can reduce cigarette consumption and its associated health consequences. (p.94)

Peterson, D.E., Zeger, S.L., Remington, P.L., Anderson, H.A. "The Effect of State Cigarette Tax Increases on Cigarette Sales, 1955-1988," *American Journal of Public Health* 1992; 82(1): 94-96.

222. The estimates thus range from –0.37 to –0.64. Although the persistence of all these responses remains uncertain, it thus seems likely that systematic tax increases would have an immediate and progressive effect on consumption and recruitment, particularly among young people, who are less wealthy and less addicted. (p.245)

Peto, J. "Price and consumption of cigarettes: a case for intervention?" *British Journal of Preventive and Social Medicine* 1974; 28: 241-245.

223. Of all the strategies governments have adopted to reduce tobacco use, tax-induced price increases have proven the most effective and reliable. As with other goods, there is an inverse relationship between the affordability and consumption of tobacco. Fiscal policy is the most effective weapon governments have to ensure that tobacco's affordability does not

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undermine national goals for the reduction of tobacco consumption. (p.1)

Physicians for a Smoke-Free Canada, Non-Smokers' Rights Association, The Lung Association, Heart and Stroke Foundation of Canada, Canadian Oncology Society, Canadian Medical Association, Canadian Council on Smoking and Health, Canadian Cancer Society, Canadian Association of Optometrists. "Canada's Tobacco Tax Policies: Successes and Challenges. A Submission to The Honourable Donald Mazankowski, Minister of Finance" Ottawa. December 1992.

224. The 1989 $0.25 tax increase produced a decline of about 12% in cigarette consumption. This decline in consumption was approximately equal to the decline that research on the price elasticity of demand predicts. (p. II-x).

. . .

Support for a substantial increase in the cigarette excise tax was stronger among those who had recently quit smoking, suggesting that price is a significant motivator to maintain a successful quit attempt. (p. II-xi)

Pierce, J.P., Gilpin, E.A., Emery, S.L., Farkas, A.J., Zhu, S.H., Choi, W.S., Berry, C.C., Distefan, J.M., White, M.M., Soroko, S., Navarro, A. *Tobacco Control in California: Who's Winning the War? An Evaluation of the Tobacco Control Program, 1989-1996.* A Report to the California Department of Health Services. (La Jolla, CA: University of California, San Diego, 1998).

225. We use cross-sectional data gathered through a survey of 1,600 adolescents.

. . .

The price elasticity of current smoking is –0.5 (S.E. 0.25). In response to higher prices, older youth were more likely to reduce the number of cigarettes smoked per day than to quit entirely. Cigarette smoking was inversely related to the price of premium brands, but not discount brands.

The price of cigarettes has a major effect on cigarette consumption. Higher tobacco taxes reduce smoking. (p.597)

Pinilla, J., Gonzalez, B., "Differences in Young People's Responsiveness to Cigarette Price," In: American Cancer Society, American Medical Association, The Robert Wood Johnson Foundation. *11th World Conference on Tobacco OR Health. Promoting a Future Without Tobacco. Abstracts. Vol. 3.* August, 6-11, 2000. Chicago, Illinois, USA, p.597.

226. Two years after the implementation of a ballot measure to increase the excise tax on tobacco and initiate TPEP [Tobacco Prevention and Education Program], per capita consumption has declined 11.3% in Oregon, or the equivalent of 200 cigarettes (10 packs) per capita. (p.141)

. . .

Decreased consumption is probably a result of both the increase in the price of cigarettes and the tobacco-use prevention program. Price elasticity of demand, defined as the percentage change in demand for cigarettes resulting from a 1% change in price, is an estimated -0.4%. (pp.141-142)

Pizcani, B., Mosbaek, C., Hedberg, K., Bley, L., Stark, M., Moore, J., Fleming, D. "Decline in Cigarette Consumption Following Implementation of a Comprehensive Tobacco Prevention and Education Program--Oregon, 1996-1998," *Morbidity and Mortality Weekly Report* 1999; 48(7): 140-143. [note:

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quotations are from an Editorial Note accompanying the article]

227. Following the federal government announcement today to implement a series of measures concerning the taxation of cigarettes, Provincial Treasurer Patricia Mella indicated that Prince Edward Island will join Quebec, Ontario, New Brunswick and Nova Scotia to increase the health tax on tobacco.
"We have joined the federal government in increasing our health tax on tobacco out of a shared concern over the effect of smoking on the health of Canadians," stated Patricia Mella, PEI's Provincial Treasurer.

Prince Edward Island Provincial Treasury, "Province Joins Federal Government in Health Tax Increase on Tobacco" April 5, 2001 [news release].

228. Price decreases are very effective in attracting young people to cigarette consumption. The important message is that cigarette consumption is strongly influenced by price, especially for younger people. When prices go down, consumption is encouraged. When prices go up, consumption is discouraged. (p.3)
...
A big part of that decline will be because young men and women do not start to smoke, given the now higher prices. A 20 percent price increase would bring a 26 percent reduction in smoking if the -1.3 elasticity still holds. (p.4)

Purcell, W.D. "Changing Prices, Changing Cigarette Consumption," Virginia's Rural Economic Analysis Program (Virginia Tech). 1999. REAP Policy Paper No. 10. downloaded from
http://www.reap.vt.edu/publications/policy/policy10.pdf

229. La vice-première ministre et ministre d'Etat à l'Economie et aux Finances, Mme Pauline Marois, a annoncé aujourd'hui une hausse de la taxe sur les produits du tabac. Cette hausse, annoncée de concer avec les gouvernements du Canada, de l'Ontario, du Nouveau-Brunswick, de la Nouvelle Ecosse et de l'Ile-du-Prince-Edouard, vient appuyer les efforts déployés jusqu'ici par le gouvernement du Québec pour la réduction du tabagisme.
Mme Marois s'est déclarée « confiante que cette hausse significative de la taxe sur le tabac, la plus importante depuis 1992, contribuera à réduire le tabagisme, particulièrement chez les jeunes, sans pour autant entraîner une reprise de la contrebande ».

Québec Cabinet de la vice-première ministre et ministre d'Etat à l'Economie et aux Finances « Hausse de la taxe sur les produits du tabac et investissements importants dans la lutte au tabagisme » 5 avril 2001. [news release]
http://communiques.gouv.qc.ca/gouvqc/communiques/GPQF/Avril2001/05/c2127.html

230. Economists have shown that if the price of cigarettes is too high, fewer children will start to smoke. A 20c tax increase is likely to result in 500,000 fewer teenage smokers, according to a 1989 report of the US General Accounting Office. Thus, a cheap tobacco policy means the problem will merely be perpetuated for another generation. (p.11)

Ratner, J., Dany, M., Sandberg, M., Crane, M., Schoenmarkin, S., Connolly, G. "Questions and Answers About Taxes" *World Smoking and Health* 1990; 15(3): 11-13.

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231. In conclusion, substantially increasing taxation on tobacco products is sound public policy and an effective method of reducing consumption of tobacco products. It is an effective public policy tool for significantly reducing death and disability from various forms of cancer, cardiovascular disease, and stroke.
The American Cancer Society, the American Heart Association, and the American Lung Association and many other groups urge the Congress to raise the cigarette tax by $2 per pack, an increase that will save nearly 2 million lives and raise well over $20 billion each year. We also urge you to adopt the President's proposal to equalize the tax on chewing tobacco, snuff, and other tobacco products with the tax on cigarettes. (pp.5-6)
Richardson, L.D. "Tobacco Taxes as a Public Health Measure" *World Smoking and Health* 1994; 19(1): 4-6.

232. The extensive research on tax policies and their effect on smoking rates has clearly demonstrated that an effective way to decrease smoking is to increase taxes and thus the prices of tobacco products. In this process, governments earn revenue that can be used to fund health education and other anti-tobacco activities. Moreover, the experience of Australia indicates that, if tobacco taxes are increased and the extra revenue thus obtained is used to fund health and sports, public support for such action is increased. Above all, increased taxes on, and prices for, tobacco products constitute a powerful weapon for discouraging the use of tobacco by young people. (p.96)
Roemer, R. *Legislative Action to Combat The World Tobacco Epidemic.* 2nd ed. (Geneva: World Health Organization, 1993).

233. Sharp one-year declines in tobacco consumption also occurred from 1976 to 1977 and from 1982 to 1983. The first of this coincided with Parliamentary debate on private members' bills relating to smoking, while the second occurred following tobacco tax increases imposed by federal and provincial governments. Similarly, tax increases in the United Kingdom between 1980 and 1983 were associated with declining consumption trend in those years.
. . .
In Norway consumption began slowly to rise during the 1960s. A series of tax led price increases, notably those of 1980-82, were introduced in the context of a comprehensive government program to reduce smoking; these measures appear to have brought Norwegian tobacco consumption back to the level trend found in the 1950s, about 2 Kg/adult annually.
. . .
The success of any efforts to reduce smoking by raising taxes on tobacco could be enhanced by pricing policies which also discourage substitution. (p.521)
Rogers, B., Myers, G., Collishaw, N.E. "Trends in Tobacco Consumption in Seven Countries 1950-1984," Proceedings of the 34th International Congress on Alcoholism and Drug Dependence. Calgary, Canada. August 1985. pp.521-527.

234. The analysis confirms that higher cigarette prices reduce youth cigarette smoking and that price sensitivity is inversely related to age. The estimated policy effects suggest that relatively strong smoking restriction can reduce both teens' smoking rate and teens' smoking intensity. (p.598)
Ross, H. Chaloupka, F., Pacula, R., "The Impact of Prices and Public Policies on Youth Smoking," In: American Cancer Society, American Medical Association, The Robert Wood Johnson Foundation. *11th World Conference on Tobacco OR*

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Health. Promoting a Future Without Tobacco. Abstracts. Vol. 3. August, 6-11, 2000. Chicago, Illinois, USA, p.598.

235. The real price of cigarettes fell by 36% between 1970 and 1989, while consumption per adult aged 15+ increased by 46%. The trend in price appears to be mildly cyclical with troughs in 1974 and 1981. There was a particularly steep fall in price between 1978 and 1981, and an equally dramatic increase in consumption. (p.237)

. . .

The results from this study would tend to confirm Chapman and Richardson's finding that smokers in developing countries may be more sensitive to price changes than smokers in Western countries. This suggests that an excise-led smoking control policy can be a powerful tool for reducing smoking in poorer countries. It would also generate revenues for other government activities – ideally those related to health.

Saloojee, Y., "Price and Income Elasticity of Demand for Cigarettes in South Africa," In: Slama, K., ed. *Tobacco and Health: Proceedings from the 9th World Conference on Tobacco and Health.* (New York: Plenum Press, 1995), pp.235-239.

236. In summary, the tax rate increase resulted in a decrease in taxable consumption of cigarettes and other tobacco products. The amount of the decrease in taxable cigarette consumption is close to the 13% original estimate made by the Department of Revenue.(p.2 of internet version)

. . .

The most common reason people give for quitting smoking is their own health; however cost was a factor for about 25% of people who have quit smoking. (p.9)

Schumaker, C., Fried, B. "The Impact of the 1997 Tobacco Tax Rate Increase in Alaska." Alaska Department of Revenue, Alaska Department of Health and Social Services. Juneau, Alaska. August 1999, http:///www.hss.state.ak.us/tobacrep.htm, downloaded March 8, 1999.

237. Pricing policies should be framed carefully to avoid the sort of anomalies that have arisen in Australia, and so that cigarettes are subject to regular price increases. (p.57)

Scollo, M., "Australia: Older and Wiser About Tobacco Control Policy- Keynote Address," In: *8th World Conference on Tobacco or Health, Building a Tobacco-Free World.* March 30-April 3, 1992. Buenos Aires, Argentina. (American Cancer Society, 1994). pp.54-58.

238. The short-run price elasticity is around –0.22, between the estimates of Baltagi and Levin (1986) and Schmalensee (1972) which are –0.20 and –0.32 respectively. Since the coefficient associated with the lagged consumption term is around –0.40, the long-run price elasticity is around –0.37. This also lies between the estimates of Baltagi and Levin (-0.22) and Schmalensee (-0.46). The short-run income elasticity is around 0.24. Previous estimates range widely; for instance Baltagi and Levin (1986) estimated it as –0.004 (so cigarettes are an inferior good) while Fujii estimated it to be around 0.50. Our estimate is in the center of this range. (p.323)

. . .

Given the results of our stabilized models, governments seem to have a number of

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alternative measures at their disposal to lower cigarette consumption. . . . Last, but certainly not least, higher taxes effectively lower consumption. While cigarette demand is relatively price-inelastic, it is certainly not perfectly inelastic. (p.325)

Seldon, B.J., Boyd, R., "The Stability of Cigarette Demand," *Applied Economics* 1991;23:319-326.

239. Our short-run price elasticity is $\pi\alpha_1 = -0.4$ (with *t*-value = -3.53) which is sandwiched by the results of Baltagi and Levin (-0.2) and McGuinness and Cowling (-1.0). (p.675)

Seldon, B.J., Doroodian, K., "A Simultaneous Model of Cigarette Advertising: Effects on Demand and Industry Response to Public Policy," *Review of Economics and Statistics* 1987;71(4):673-677.

240. This analysis shows that governments were much better off financially prior to the tax cuts, even with the significant level of smuggling in evidence in late 1993.
The tax decreases resulted in combined federal and provincial revenue losses of more than $1.2 billion in fiscal year 1994-1995. The federal government lost $656 million, more than twice the amount predicted. (p.1)

. . .

The sole beneficiaries of the decision to decrease tobacco taxes were the tobacco manufacturers. The resulting lower prices on tobacco stimulated demand for their products. (p.5)

Selin, H. "The 1994 Tobacco Tax Cuts: Revenue Impact and Policy Alternatives" Ottawa, Ont.: Non-Smokers' Rights Association. May 1996.

241. Of all of the measures used to reduce smoking in the developed world, no single intervention has proven as effective as the use of tobacco taxation policy to decrease the affordability of tobacco.

Selin, H. "Population-Based Strategies for Controlling the Tobacco Epidemic Among Women." Smoking and Health Action Foundation. 1996.

242. Results: Study mean data confirm that tobacco's demand in Mexico is unelastic and it is positive (0.195). From the data we estimated that if price increases or decreases in about 10%, demand is reduced or increased in 1.95%, respectively. (p.605)

Sesma-Vazquez, S., Vazquez-Segovia, L.A., Hernandez-Avila, M., "Price as a Determinant for Smoking Tobacco 1994-1995," In: American Cancer Society, American Medical Association, The Robert Wood Johnson Foundation. *11th World Conference on Tobacco OR Health. Promoting a Future Without Tobacco. Abstracts. Vol. 3.* August, 6-11, 2000. Chicago, Illinois, USA, p.605.

243. It appears that the 1983 federal tax increase was particularly effective in reducing smoking, but this was because firms raised prices dramatically during the time immediately before and after the tax went into effect. (p.1119)

Showalter, M.H. "The Effect of Cigarette Taxation on Cigarette Consumption," *American Journal of Public Health* 1998; 88(7): 1118-1119.

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244. In order for taxation to be most useful in controlling consumption, tax structure should have a large specific element of tax either per cigarette or per unit weight of tobacco, and ideally as a combination of both. Also, there should not be a significant difference in tax rates between different types of tobacco, otherwise tax rises may simply shift consumption from one type of tobacco to another. (p.224)

Simpson, D., "The Structure of Tobacco Tax," In: Slama, K., ed. *Tobacco and Health: Proceedings from the 9th World Conference on Tobacco and Health.* (New York: Plenum Press, 1995), pp.221-224.

245. [This document shows that a carton of cigarettes in Ontario and Quebec costs about C$38, compared to about C$60 in Michigan and Maine, and C$65 in New York state].

Smoking and Health Action Foundation. "Average price of a carton of 200 cigarettes; Provinces and U.S. border states" September 2001.

246. Short-run elasticity of demand estimates for cigarettes generally predict around a 4 percent decline in U.S. cigarette consumption for every 10 percent increase in price. Using this elasticity estimate, a $1.50/pack increase implemented in 1999 would induce a 30 percent decline in U.S. cigarette consumption.

. . .

A one-time large increase in the federal excise tax is not likely to occur. Instead if an increase is passed it is likely to be spread over a number of years. If a $1.50/pack increase is spread equally over 3 years (i.e., 50 cents/pack increase for 3 years), domestic cigarette consumption is estimated to fall by 23%. . . .If the $1.50/pack tax increase is spread equally over 10 years, U.S. cigarette consumption by 2008 is projected to decline by around 19 percent...The above estimates are short-run estimates. Longer-run estimates would induce greater cuts in consumption as the distribution of the smoking population changes. (p.1)

Snell, W.M. "Tobacco Tax Increase Effects on Consumption/Burley Demand." University of Kentucky, Department of Agricultural Economics. March 1998.

247. The estimates of the price elasticity of the demand for cigarettes in Greece indicate that a 10% increase in the price of cigarettes would lower consumption only by 1% in the short-run and by 1.4% in the long-run. (p.329)

Stavrinos, V.G. "The Effects of an Anti-smoking Campaign on Cigarette Consumption: Empirical Evidence from Greece," *Applied Economics* 1987; 19: 323-329.

248. Recognizing that higher tobacco prices are a deterrent for tobacco use, contribute to a long-term joint federal-provincial-territorial strategy for increasing taxation for tobacco products across Canada. (p.15)

Steering Committee of the National Strategy to Reduce Tobacco Use [Canada], Federal/Provincial/Territorial Advisory Committee on Population Health [Canada] "New Directions for Tobacco Control in Canada: A National Strategy" (Ottawa: Health Canada, 1999).

249. Data from a variety of survey sources at the national level and for the province of Ontario, as well as industry statistics on per capita consumption, point to 1993-1994 as the period when

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a decline in smoking over almost three decades appears to have been reversed. (p.31)

. . .

The conclusion of this analysis -- that the decline in smoking observed from 1988 reversed itself in 1993-1994 -- is consistent with the economic literature on the effects of price on consumption. (p.32)

Stephens, T., "Trends in the Prevalence of Smoking, 1991-1994," *Chronic Diseases in Canada* 1995; 16(1): 27-32.

250. Results. The odds ratio for being a smoker was 1.21 where no-smoking bylaws were relatively infrequent and 1.26 when cigarettes were relatively inexpensive after adjusting for individual age, sex, education and marital status.
Conclusions. Both cigarette prices and no-smoking bylaws are effective in controlling smoking; either alone will likely have less impact than the two measures together. (p.1519)

Stephens, T., Pederson, L.L., Koval, J.J., Kim, C. "The Relationship of Cigarette Prices and No-Smoking Bylaws to the Prevalence of Smoking in Canada," *American Journal of Public Health* 1997; 87(9): 1519-21.

251. Both the price and income elasticities are generally estimated as higher in absolute value in the short run (quarterly data) than in the long; this result, though it violates the le Chatelier principle, is consistent with the alleged addictional effects of smoking in a period of rising prices. (p.26)

Sumner, M.T., "The Demand for Tobacco in the U.K.," *The Manchester School* 1971;39:23-36.

252. In the simulations examined, the price of cigarettes rises by roughly the full amount of the tax. This is because the derived supply curve for cigarettes is nearly horizontal, even with a vertical supply curve of domestic tobacco. This price increase entails a reduction of 5% to 6% in domestic quantities of cigarettes sold, but the quantities exported increase some to offset domestic sale declines. (p.241)

Sumner, D.A., Wohlgenant, M.K. "Effects of an Increase in the Federal Excise Tax on Cigarettes," *American Journal of Agricultural Economics* 1985; 65: 235-242.

253. An analysis evaluates the impact of taxation on cigarette consumption, using a recursive model that includes a retail price equation and a dynamic demand equation. The analysis is based on panel data for 11 western states over the period 1967-1990. Results indicate that cigarette consumption is price-sensitive, with a demand elasticity of –0.40 in the short run and –0.48 in the long run. A tax increase, such as that imposed in California in January 1989, can have a strong effect of reducing cigarette consumption by between 11.2% in the short run and 13.4% in the long run. These results support the theory of rational addiction and the hypothesis that, as a part of their oligopoly behavior, the tobacco companies often do raise end-market prices by more than the amount of the increase in tax rates. (p.91)

Sung, H.-Y., Hu, T.-W., Keeler, T.E. "Cigarette Taxation and Demand: An Empirical Model" *Contemporary Economic Policy* 1994; 12(3): 91-100.

254. Alberta currently has the lowest tobacco taxes in Canada, about 33 cents per pack lower than

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the average of the other nine provinces. The results of the 1987 provincial tax increase show clearly that the government can raise significant revenue while decreasing the use of a product that results in 35,000 annual Canadian deaths and billions of dollars in economic losses.

We urge the Government of Alberta to bring forward, in its next budget, a tax increase at least equal to the 1987 increase. This would prevent a large amount of death and disease, provide the Government with needed funds and ensure that the price of tobacco more adequately reflects its social costs. We urge the Government to bring forward this policy as part of a comprehensive tobacco control program. (p.1)

Sweanor, D.T. (Staff Legal Counsel, Non-Smokers' Rights Association). "Tobacco Taxation and Public Health; A submission to The Hon. Richard Johnston, Treasurer of Alberta" August 1988.

255. We have obtained very large tobacco tax increases that have caused dramatic increases in tobacco prices and resulted in stunning falls in the number of young people using tobacco. In a period of 12 years- from 1979 to 1991- the real price of tobacco increased by a total of 158 percent and teenage tobacco use fell by two-thirds. (p.47)

Sweanor, D., "The Role of Excise Taxes in Preventing Tobacco Use Among Young People," In: *8th World Conference on Tobacco or Health, Building a Tobacco-Free World.* March 30-April 3, 1992. Buenos Aires, Argentina. (American Cancer Society, 1994). pp.46-50.

256. On February 9, 1994, the federal government made a policy decision which could well be the single greatest blow ever to the cause of better public health in Canada. "In order to combat tobacco smuggling", they effectively lowered the price of cigarettes. If health is a major value of our country, such an approach is about as sensible as reducing impaired driving by doubling the allowable blood alcohol level. The price to be paid in terms of suffering and premature death, and added health care burden and economic losses, is staggering. The lack of attention given to the public health implications of caving in to the tobacco companies and the smugglers is extremely disappointing. (p.79)

Sweanor, D. "Killing Taxes and Canadians" *Canadian Journal of Public Health*, 1994; 85(2): 78-79.

257. There is an overwhelming case for higher tobacco taxes on the basis of health policy, fiscal policy, and public acceptance. (p.6)

Sweanor, D. "Why Raise Cigarette Taxes" *World Smoking and Health* 1994; 15(3): 6-8.

258. Research has shown that increased tobacco prices are the single most effective tool in reducing tobacco use. (p.1)

. . .

The effect was dramatic—a doubling of the taxes on cigarettes between 1980 and 1984. The effect on consumption was equally stunning—as the real price rose by 25 per cent, per capita consumption fell by 10 per cent. (p.6)

Sweanor, D.T., Martial, L.R. "The Canadian Tobacco Tax Project 1985-1992: A Review of a Major Public Health Success Story," Non-Smokers' Rights Association. Ottawa, Ontario. August 29, 1992.

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259. There have been numerous studies of the relationship between price and demand for tobacco products. These have included studies by Health Canada over many years and a major review by Finance Canada in 1993. There are also studies which have been done for the tobacco industry (Informetrica, 1991) and studies done in other countries. All of these studies found an inverse relationship between price and demand. This is true whether looking at rising or falling prices. Overall, a 10% change in price will result in anywhere from about 3% to a 9% change in consumption, with strong indications that young people are particularly price-sensitive. (p.6)

. . .

The strong indication is that total domestic sales are increasing, quite possibly at a significant rate. At the very least we have seen an end to the rapid decline in tobacco consumption witnessed over the past decade. (p.7)

Sweanor, D.T., Martial, L.R. "What is Happening to Trends in Canadian Tobacco Consumption? A Review of the First Six Months of the Tax Rollback" Ottawa: Smoking and Health Action Foundation, August 30, 1994.

260. Canadian experience with raising taxes during the past decade has lead to estimates of price elasticity that are very much in line with the earlier American research. An unpublished analysis of trends during the 1980's, conducted by a team led by Dr. Roberta Ferrence of the Addiction Foundation in Toronto supports the view that adult elasticity is about –0.4 and teenage elasticity is substantially higher, perhaps even higher than earlier American research had forecast. (p.1)

Sweanor, D.T., Martial, L.R., Dossetor, J.B. "The Canadian Tobacco Tax Experience: A Case Study," Non-Smokers' Rights Association, Smoking and Health Action Foundation. Ottawa, Ontario. 1993.

261. The lessons are clear. Increased tobacco taxes help both revenue and health. Failure to increase them hurts both of these goals. In so many other public health campaigns, governments have been urged to spend scarce resources to promote health. But in the case of tobacco tax policy, health advocates are in the fortunate situation of urging governments to take the most effective action against our leading cause of death and informing them that they will see a net gain in their treasuries for doing so. (p.8)

Sweanor, D., Martial, L., Dossetor, J. "How Tobacco Tax Increases Affect Revenue" *World Smoking and Health* 1994; 19(1): 7-8.

262. We made the point that keeping tobacco taxes down to "help tobacco farmers" was simply unjustified in economic as well as health terms. Far better that politicians who want to assist these farmers should support higher tobacco taxes but simultaneously take some part of the additional money raised to assist tobacco growing areas find alternative sources of revenue. The case was clear cut and the logic of it constantly reiterated in our quest for health-oriented tobacco taxation. And it worked: taxes went down, tax revenue increased, and assistance was given to tobacco farmers to adjust to lower consumption levels. (p.19)

Sweanor, D., Martial, L., Dossetor, J. "Raising Cigarette Taxes in a Tobacco Growing Jurisdiction" *World Smoking and Health* 1994; 19(1): 18-19.

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263. It is a basic rule of economics that, as the price of a commodity rises, demand for that commodity falls. There is a substantial body of evidence, from the United States and other countries, that demonstrates that a cigarette price increase leads to a fall - but a less than proportionate fall - in cigarette consumption. Much of the evidence was summarized in the 1992 report of the Surgeon General, *Smoking and Health in the Americas* . . .
That evidence is based on econometric studies. Empirical experience in countries which have seen substantial price increases tells a similar tale. The relationship between the real (i.e. inflation adjusted) price of tobacco and per capita consumption for Canada shows this clearly (figure 1).
The Canadian experience also suggests that price has been associated with a particularly rapid fall in consumption among teenagers (figure 2).
But Canada is not special. It is typical. Exactly the same phenomenon can be seen in the United States (figure 3). As shown in figure 4, taxes in the U.S. have fallen in real terms since the time of the landmark 1964 report of the United States Surgeon General. (p.59)

Sweanor, D., Warner, K.E., "The Role of Federal and State Excise Taxes," In: Houston, T., ed. *Tobacco Use: An American Crisis. Final Conference Report and Recommendations From America's Health Community.* Washington, D.C., 9-12 January 1993 (Chicago: American Medical Association, 1993). pp.59-62.

264. The estimates clearly support the hypothesis that increasing the price of cigarettes would increase the probability of smoking cessation among young adults and therefore decrease the amount of time they smoke. The estimated price elasticity of smoking cessation fell in a narrow range of 0.245 to 0.466, with an average price elasticity of 0.343 for all the models using both methods. (p.19)

Tauras, J.A. "The Transition to Smoking Cessation: Evidence from Multiple Failure Duration Analysis." National Bureau of Economic Research. Cambridge, MA. November 1999. NBER Working Paper No. 7412.

265. Data on cigarette use are taken from the 1976 through 1993 surveys of high school seniors as part of the Monitoring the Future program. Seven follow-ups are conducted on each senior class and therefore each individual is sampled up to eight times. . . . The results indicate that increases in cigarette prices would lead to significant reductions in both the number of people smoking and the frequency with which individuals smoke. The estimated overall average price elasticity of demand is –0.791. (p.1)

Taurus, J.A., Chaloupka, F.J. "Price, Clean Indoor Air Laws, and Cigarette Smoking: Evidence from Longitudinal Data for Young Adults" Working Paper 6937. National Bureau of Economic Research, Cambridge, MA. February 1999.

266. These estimates clearly show that increases in the real price of cigarettes will increase the probability of cessation by both young adult men and women. . . . The price elasticity of male cessation ranges from 1.07 to 1.17 and has an average elasticity of 1.12. The price elasticity of female smoking cessation ranges from 1.17 to 1.21 and has an average elasticity of 1.19. These estimates imply that a 10% increase in the real price of cigarettes will increase the probability of smoking cessation by approximately 11% and 12% for young men and women respectively. (p.17)

Tauras, J.A., Chaloupka, F.J. "Determinants of Smoking Cessation: An Analysis of Young Adult Men and Women" Working Paper 7262. National Bureau of Economic Research, Cambridge, MA. July 1999.

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267. The estimates indicate that decreases in the price of NRT [nicotine replacement therapy] and increases in the price of cigarettes would lead to substantial increases in per-capita sales of NRT products. The average own-price elasticity of demand for Nicoderm CQ [patch], Nicorette [gum], and Nicotrol [patch] is –1.4, –1.5, and –1.1 respectively. (p.i)

. . .

The average cross-price elasticity of demand for Nicoderm CQ and Nicorette are 0.68 and 0.81 respectively. The positive and significant cross-price elasticities imply that NRT and cigarettes are substitutes in consumption and clearly indicate that increases in the price of cigarettes will increase the use of NRT products. In fact, the cross price elasticities imply that a ten percent increase in the price of cigarettes will increase Nicoderm and Nicorette demand by approximately 6.5% and 8.0% respectively. (p.15)

Taurus, J.A., Chaloupka, F.J. "The Demand for Nicotine Replacement Therapies" Working Paper 8332. National Bureau of Economic Research, Cambridge, MA. June 2001.

268. The real price of cigarettes is found to have a negative and significant impact at the 1% significance level on smoking initiation in all the methods that were estimated when initiation is based on smoking at least 1 to 5 cigarettes per day on average and at least ½ pack per day on average. In addition, the real price of cigarettes is found to have a negative impact on smoking initiation defined as smoking any cigarettes in the past 30 days, however, this relationship is significant at the 10% level in only models 7 and 9. . . . The average price elasticity of initiation based on any smoking, at least 1-5 cigarettes per day on average and at least ½ pack per day on average are –0.271, -0.811, and –0.955 respectively. These estimates clearly indicate that increases in the real price of cigarettes (which can be achieved through excise taxation) will decrease the number of adolescents who start smoking. The results above indicate that a 10% increase in the price of cigarettes will decrease the probability of smoking initiation between approximately 3% and 10% depending on how initiation is defined. In addition, these results suggest that individuals who are classified as having initiated smoking based on greater cigarettes smoked are more price responsive than are individuals classified as having initiated smoking based on fewer cigarettes smoked. This is not surprising given that many adolescents who experiment with cigarettes or smoke in small quantities never purchase their own cigarettes, but rather "borrow" from a friend. (pp.16-17)

Taurus, J.A., O'Malley, P.M., Johnston, L.D. "Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis" Working Paper 8331. National Bureau of Economic Research, Cambridge, MA. June 2001.

269. As shown in Table 2, in this study we find a price elasticity of –0.660 in 1956 which drops to –0.402 by 1966 and to –0.278 and –0.147 by 1971 and 1985, respectively. (p.1181)

Tegene, A., "Kalman Filter and the Demand for Cigarettes," *Applied Economics* 1991; 23: 1175-1182.

270. Generally, tax increases have led consistently to decreased cigarette consumption, and the industry seems to be well aware of this. In this connection, it is interesting to note some of the comments made in the industry's publications. One such report states that "tax is a much more effective reason than propaganda why tobacco consumption in Britain is falling"(p.

Tab

498) [Quoting Anonymous, "Britain has a long record of bouncing back after adversity" *Tabak Journal International* June 1982, pp.220-221.]

Thompson, M.E., Forbes, W.F., "Taxation as a Means of Affecting Tobacco Usage," In: Forbes, Frecker, Nostbakken, ed., *Proceedings of the Fifth World Conference on Smoking and Health*. Canadian Council on Smoking and Health. Ottawa. Volume 1. 1983. pp.495-504.

271. In summary, after the scrutiny of many possible models, the time series data indicate unequivocally a negative association between real price and consumption of cigarettes in Canada. Further experience and indirect evidence suggest that this relationship may well be causal, and that elevation of the price by government is a possible anti-smoking measure which deserves to be tested. (p.131)

Thompson, M.E., McLeod, I. "The Effects of Economic Variables upon the Demand for Cigarettes in Canada" *Mathematical Scientist* 1976; 1:121-132.

272. The results suggest that smokers of lower social class may be more responsive to tax changes and that cigarette tax increases may not be regressive. Cigarette prices in the UK are still some 25% below the 1948 real price level. The downward drift in prices may have effectively increased the smoking levels of lower socioeconomic groups relative to social classes 1 and 2 and may have been a major factor in the divergence in social class smoking. (p.355)

. . .

It is suggested that increases in cigarette tax may fall less heavily on lower social groups despite their higher consumption, because they respond more by reducing consumption. (p.364)

Townsend, J., "Cigarette Tax, Economic Welfare and Social Class Patterns of Smoking," *Applied Economics* 1987; 19: 355-365.

273. In summary, it may be stated that increasing the tobacco excise, according to the results of several studies, appears to be the most effective single measure for curtailing total consumption of tobacco as well as the health damage caused by smoking. Both Finnish and foreign studies show that the best decreases in total consumption and reductions in health damage caused by smoking are brought about by health education supported by a price policy consistent with health education objectives. (p.55)

Townsend, J. "Tobacco Price and the Smoking Epidemic" Smoke-Free Europe 9. (Copenhagen: World Health Organization Regional Office for Europe, Commission of the European Communities, 1988).

274. Raising cigarette tax, effectively reduces cigarette consumption particularly by those most in need of targeting. (p.50)

Townsend, J., "Policies to Halve Smoking Deaths," *Addiction* 1993; 88: 43-52.

275. Tobacco tax largely determines the price of tobacco products and has two major effects

- To reduce smoking and so smoking illness and deaths
- To provide government tax revenue (Townsend, p.229)

Tab

Townsend, J., "Monitoring and Analysing Changes in Tobacco Prices," In: Slama, K., ed. *Tobacco and Health: Proceedings from the 9th World Conference on Tobacco and Health.* (New York: Plenum Press, 1995), pp.229-234.

276. Conclusion

There is little doubt that price has a major effect on cigarette consumption and thus smoking induced disease, especially in low income groups. To use this as a tool of preventive medicine, therefore, seems the right public health policy. Fiscal policy is not an alternative to other methods of reducing the harm of tobacco, but it is one of the most powerful elements of the type of comprehensive policy recommended by the World Health Organization and other authoritative bodies. Raising tobacco tax also has the advantage to governments of increasing revenue. Public information and health promotion campaigns reduce smoking in their own right; they may also pave the way to make cigarette tax increases for health reasons politically acceptable. Progressive increases in taxes will reduce smoking and smoking disease, to the interest of health in all countries. (p.141)

Townsend, J., "Price and Consumption of Tobacco," *British Medical Bulletin* 1996; 52(1): 132-142.

277. Conclusion.

Changes in cigarette prices seem to have had a strong impact on smoking; the greatest impact is on groups that are least responsive to health publicity measures but have the highest prevalence of smoking. This suggests that real increases in the price of cigarettes will both reduce smoking and help to reduce the differences in the prevalence of smoking and smoking related diseases between socio-economic groups. (p.927)

Townsend, J., Roderick, P., Cooper, J. "Cigarette Smoking by Socioeconomic Group, Sex, and Age: Effects of Price, Income, and Health Publicity," *British Medical Journal* 1994; 309:923-927.

278. It has also been part of the European Commission's policy to work towards high indirect taxes on tobacco products in order to discourage smoking behaviour. (p.334)

. . .

For example, the increase in the retail price of a packet of cigarettes in Spain from 0.31 ecu to 0.58 ecu yields a reduction from 2,740 to 1,446 cigarettes per adult for an elasticity of –0.55, and a reduction to 2,199 cigarettes per adult for an elasticity of –0.23. The reduction in the weighted average of cigarettes consumed per adult across Europe is between 6 and 15%, depending on the elasticity, which is encouraging. (pp.336-7)

Trigg, A.B., Bosanquet, N. "Tax Harmonisation and the Reduction of European Smoking Rates," *Journal of Health Economics* 1992; 11: 329-346.

279. U.S. smokers consumed an estimated 435 billion cigarettes in 1999, 6.5 percent less than a year earlier. Price increases, higher State taxes, and expanding regulations are the main factors in declining cigarette use. (p.4)

U.S. Department of Agriculture, Market and Trade Economics Division, Economic Research Service. *Tobacco Situation and Outlook Report.* April 2000.

Tab

280. One of the most effective means of reducing the prevalence of tobacco use is by increasing federal and state excise tax rates. A 10% increase in the price of cigarettes can lead to a 4% reduction in the demand for cigarettes. This reduction is the result of people smoking fewer cigarettes or quitting altogether. Studies show that low-income, adolescent, Hispanic, and non-Hispanic black smokers are more likely than others to stop smoking in response to a price increase. (p.2203)

U.S. Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention. "Tobacco Use - United States, 1900-1999," *Journal of the American Medical Association*, 1999; 282(23): 2202-2204.

281. [This study estimates price elasticities of -0.6 for the short-run and –0.69 for the long-run.] (p.154)

Valdes, B., "Cigarette Consumption in Spain: Empirical Evidence and Implications for Public Health Policy," *Applied Economics* 1993;25:149-156.

282. Studies performed on South African data estimate the long-run price elasticity of demand at between –0.5 and –0.9. The negative relationship between the real price of cigarettes and consumption is vividly displayed in Figure 2. (p.9)

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Conclusion

Although other tobacco control mechanisms exist, increases in the excise tax are particularly effective in reducing tobacco consumption. Given their greater sensitivity to price changes, the impact of excise rate increases on consumption is greater in developing vis-à-vis developed countries. Furthermore, excise tax increases do not cost the government anything; in fact, it has the potential to greatly increase government revenue. At present the tax proportion of the retail price of tobacco products in developing countries is low. Experience from the developed world has indicated that the government can greatly increase the excise rate without any fear of losing excise revenue.

While most developed countries have adopted comprehensive tobacco control policies, currently few developing countries have any controls in place. Large and regular increases in the real tobacco excise rate will provide immediate and tangible results.

South Africa is one of a limited number of developing countries that has implemented a comprehensive tobacco control policy. The mainstay of this policy is an increasing real excise tax. This has resulted in large increases in the real price of cigarettes, significant reductions in tobacco consumption and a large increase in excise revenues by the government. (p.11)

van Walbeek, C. "The Impact of Tobacco Taxation on Consumption: The South African Experience" Paper presented to the 11th World Conference on Tobacco OR Health. August 6-11, 2000. Chicago, Illinois, USA.

283. Objective.

To estimate trends in smoking prevalence among different demographic and socio-economic groups for the period 1993 to 2000.

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Results.

Since 1993 aggregate cigarette consumption has decreased by 22 per cent. Smoking prevalence has decreased by 32 per cent to 28 per cent of the adult population. This is

Tab

ascribed mainly to the sharp (85 per cent) increase in the real (i.e. inflation-adjusted) price of cigarettes. Sixty per cent of the decrease in per capita cigarette consumption is explained by a reduction in the average consumption of smokers. The other 40 per cent is explained by a reduction in smoking prevalence.

Smoking prevalence has been decreasing for most demographic and socio-economic groups. The most significant decreases have been recorded for males, Blacks, young adults (age groups 16-24 and 25-34), and low-income households. Groups that have not experienced significant decreases in smoking prevalence include Coloureds, whites, females and high-income households. (p.i)

van Walbeek, C. (Applied Fiscal Research Centre, School of Economics, University of Cape Town) "Recent Trends in Smoking Prevalence in South Africa: Some Evidence From AMPS Data" Economics of Tobacco Control Project (Phase II), Research Release No.3. Preliminary Report. January 2001.

284. It is estimated that a 20% reduction in the price of cigarettes for the next five years will result in over 142,000 new adolescent smokers (age 11-19) in Canada by the end of 1998 (Table 1). Among these persons, almost 16, 900 smoking attributable deaths will occur before age 70. A 50% price reduction is estimated to result in over 355,000 new adolescent smokers over the next five years. This will result in approximately 40,000 smoking-attributable deaths before age 70. (p.4)

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This report highlights the likely dramatic impact that changes in tobacco taxation policy will likely have on the future number of cigarette smokers, and therefore on future smoking attributable deaths. It is likely to be an underestimate the health consequences of the price decrease, in that it ignores the increased risk associated with increased consumption among teenagers currently smoking. Low prices also discourage current teenage smokers from quitting. The report does not address future health effects among those currently over age 19, nor does it assess increased disability or morbidity associated with smoking. It also only examines the effect of a price reduction for a five year period. (pp.4-5)

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Even the temporary abandonment of high cigarette taxes will likely lead to large numbers of teenagers becoming and/or remaining cigarette smokers. The health consequences of the recent tax decrease will continue for decades. (p.6)

Villeneuve, P., Morrison, H., Mao, Y., Wigle, D.T. (Bureau of Chronic Disease Epidemiology, Laboratory Centre for Disease Control, Health Canada). "The Impact of the Cigarette Price Rollback on the Future Health of Canadian Adolescents" Draft. 1994.

285. Cigarette excise taxation is that rare contemporary example of a measure that accomplishes public health good while proving fiscally attractive to the overwrought government budgeteer. It is a non-traditional public health strategy, one that may even offend the health professional who does not like to see economics and health so integrally linked. Furthermore, it requires professionals to dirty their hands in political activity, a characteristic that many will find still less appealing. Aesthetics aside, it works. (p.317)

Warner, K.E. "Cigarette Taxation: Doing Good by Doing Well" *Journal of Public Health Policy* 1984; 312-319.

286. Cigarette excise tax changes ultimately influence the health of smokers and potential

Tab

smokers. An 8-cent decrease in the federal tax is estimated to induce up to 1 million young persons, ages 12 to 25 years, to smoke, when without the tax decrease they would not. Hundreds of thousands of Americans older than 25 years would also start or continue smoking as a result of the tax decrease. Conversely, an 8- to 16- cent tax increase would encourage from 1 to 2 million young persons and 800,000 to 1.5 million adults to quit smoking or not to start. Thus, a tax increase could prevent hundreds of premature smoking-related deaths, while a tax decrease would contribute to the disease burden of tobacco. Intentionally or inadvertently, the federal cigarette excise tax is a powerful tool of public health policy. (p.1028)

Warner, K.E. "Smoking and Health Implications of a Change in the Federal Cigarette Excise Tax," *Journal of the American Medical Association* 1986; 255(8): 1028-1032.

287. Increasingly, the public health community also has come to appreciate the value of excise taxes on tobacco and alcohol. Empirical evidence demonstrates that price increases decrease the consumption of these products and that desirable health consequences follow. For example:

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- Over a dozen studies published in the last decade provide convincing evidence that a 10 percent increase in the price of cigarettes will decrease adults' cigarette consumption in the US by at least 2 percent and possibly as much as 5 percent.
- Smoking by teenagers appears to be considerably more responsive to price changes.
- In Great Britain, analysis indicates that the lower social classes are more price responsive to cigarette price changes than are the more affluent classes.
- According to two estimates, the seemingly innocuous eight-cent-per-pack increase in the US federal cigarette excise tax in 1983 ultimately will reduce tobacco's toll of premature mortality by at least 100,000 deaths. (p.529)

Warner, K.E. "Tobacco Taxation as Health Policy in the Third World" *American Journal of Public Health* 1990; 80(5): 529-531.

288. In industrialized nations, the consensus estimate is that a 10% increase in cigarette price will produce approximately a 4% decline in the quantity of cigarettes demanded by smokers. More limited data from developing countries suggest that the impact may be in the order of twice as large. (p.82)

Warner, K.E. "The Economics of Tobacco: Myths and Realities," *Tobacco Control* 2000; 9: 78-89.

289. Taxation is a rather blunt instrument, in that a large majority of the burden of any tax increase will be born by adult smokers, not children. Taxation has been shown to be an effective deterrent to smoking, however, with the preponderance of evidence suggesting that this is especially true among children, and even many smoking adults support tax increases with the expectation that they will discourage children from initiating nicotine addictions. (More generally, taxation seems to be most effective as a deterrent to smoking among groups of people for whom education has been least effective.) As such, we deemed increased taxation a reasonable component of a package of policy measures directed at discouraging smoking by children. (p.385)

Warner K.E., Chaloupka, F.J., Cook, P.J., Manning, W.G., Newhouse, J.P., Novotny, T.E., Schelling, T.C., Townsend, J. "Criteria for Determining an

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Optimal Cigarette Tax: The Economist's Perspective," *Tobacco Control* 1995; 4(4): 380-386.

290. We estimate a generalized linear model to examine adult and teenage cigarette demand. Our analysis focuses on the extent to which excise taxes and regulations restricting smoking in public places affect cigarette consumption. The adult results indicate that the price elasticity of demand is unstable over time, ranging from 0.06 in 1970 to –0.23 in 1985. These estimates are lower than most found in previous studies. The teenage price elasticity does not differ statistically from the estimates for adults. Additionally, regulations restricting smoking in public places have a significant effect on both adult and teenage cigarette demand. (p.43)

Wasserman, J., Manning W.G., Newhouse, J.P., Winkler, J.D. "The Effects of Excise Taxes and Regulations on Cigarette Smoking," *Journal of Health Economics* 1991; 10(1): 43-64.

291. Our national strategy to reduce tobacco use addresses all aspects of the problem of tobacco consumption. In particular, it is aimed at discouraging young people from beginning to smoke.

It includes initiatives in areas such as public awareness, advertising and crop substitution. This strategy has worked to reduce the use of tobacco by Canadians. Studies show that tobacco taxes are particularly important in discouraging young Canadians from smoking. Effective midnight tonight, the excise tax on cigarettes will be increased by three cents per cigarette. The excise tax on other tobacco products will be increased proportionately. These increases will also apply to existing inventories of tobacco products. (p.17693)

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As a result these measures, it is estimated there will be about 100,000 fewer teenage smokers.

Wilson, M. (Canadian Minister of Finance). Budget Address. *House of Commons Debates*. February 26, 1991.

292. One of the most effective means of reducing tobacco consumption is a substantial tax on cigarettes. (p.599)

Winder, A.E., Chen, T., "Strategies and Experiences on Tobacco Taxation," In: American Cancer Society, American Medical Association, The Robert Wood Johnson Foundation. *11th World Conference on Tobacco OR Health. Promoting a Future Without Tobacco. Abstracts. Vol. 3.* August, 6-11, 2000. Chicago, Illinois, USA, p.599.

293. Effects of taxation increases on consumption

Real price increases (primarily through increased taxation at the state and/or federal level) have been shown to depress demand for cigarettes. Taxation increases are recommended as a component of a comprehensive smoking control program. Increasing cigarette excise taxes and then ensuring that higher real tax burdens are maintained over time, could eventually result in much lower smoking rates among the community. (p.150)

Winstanley, M., Woodward, S., Walker, N. *Tobacco in Australia: Facts and Issues, 1995.* (Carlton South, Victoria, Australia: Victorian Smoking and Health Program, 1995).

Tab

294. Our results show that the demand for cigarettes is not highly responsive to price increases (elasticity approximately equal to –0.3), but a massive (possibly phased) price increase (say of 100-200 per cent in real terms) should bring about a considerable decline in cigarette consumption. (p. 90)

Witt, S.F., Pass, C.L., "The Effects of Health Warnings and Advertising on the Demand for Cigarettes," *Scottish Journal of Political Economy* 1981;28(1):86-91.

295. A 1% increase in relative tobacco prices decreases tobacco consumption by only 0.540%.

. . .

Conclusions

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From the public health point of view, the only desirable goal of various interventions is a decrease in cigarette consumption. Even modest but continuous price increases would be very helpful in achieving this objective. It is obvious that Austria has not been using price policy in a way that would help both conflicting interests, health policy and fiscal revenues. It is possible to simultaneously decrease cigarette consumption and increase tax revenues. At present, price policy and taxation are among the most powerful tools available to control the smoking epidemic. (p.479)

Wörgötter, G.F., Kunze, M. "Cigarette prices and cigarette consumption in Austria, 1955-1983" *New York State Journal of Medicine* 1986: 478-479.

296. The Forty-third World Health Assembly,

. . .

Recalling further that resolution WHA 39.14 urged Member States to implement a comprehensive nine-point smoking control strategy;

Encouraged by:

(a) the significant progress made by many Member States in the implementation of this strategy;

(b) the continuing decline in tobacco consumption in Member States that have adopted comprehensive smoking control policies;

(c) recent information demonstrating the effectiveness of tobacco control strategies, and in particular:

. . .

- policies to achieve progressive increases in the real price of tobacco;

. . .

1. URGES all Member States:

. . .

(2) to consider including in their tobacco control strategies plans for legislation or other effective measures at the appropriate government level providing for:

. . .

(b) progressive financial measures aimed at discouraging the use of tobacco;

World Health Assembly. Resolution WHA43.16. May 1990. In: Roemer, R. *Legislative Action to Combat the World Tobacco Epidemic*, 2d ed. (Geneva: World Health Organization, 1993), pp.263-264.

Tab

297. Economic measures in particular, such as increased taxes on tobacco, have given us some of our most impressive victories in public health campaigns to date. (p.3)

World Health Organization. "Tobacco Costs More Than You Think" *Tobacco Alert*, Special Issue. World No-Tobacco Day 1995 Advisory Kit. 1995.

298. The World Bank's review of policies that really impact on tobacco use conclusively shows that price, effected through excise tax, is the most potent means of reducing consumption. Increased excise tax benefits the poor and the young more than the rich and brings in new sources of revenue to governments; for these reasons increased taxes are opposed openly and behind the scenes by the tobacco industry. Taxing the right products for the right reasons can be a very potent public health tool. (p.1)

Yach, D. (Tobacco Free Initiative, World Health Organization) "Global Threats Demand Global Solutions: Tackling the Tobacco Epidemic," Presentation, Geneva, Switzerland. June 15, 2000.

299. As Table 3 shows, the ratchet models suggest that the short run elasticity with respect to price rises around –0.3, whereas the response to reductions in income would be in the order of 0.15. (p. 209).

Young, T., "The Demand for Cigarettes: Alternative Specifications of Fujii's Model," *Applied Economics* 1983; 15: 203-11.

300. The price of cigarettes and cigarette excise taxes were found to have negative and significant impacts on cigarette consumption in all equations. These estimates indicate that increases in cigarette taxes and, consequently, prices would reduce cigarette consumption in the US. Estimated price elasticity of cigarette demand model IV was –0.62 when tax was used as an instrument variable for price, whereas it was –0.47 when price itself was used. (pp. 165-166)

. . .

Increasing excise taxes for cigarettes is one of the most effective means to reduce cigarette consumption, especially among youth. (p.169)

Yurekli, A.A., Zhang, P., "The Impact of Clean Indoor-Air Laws and Cigarette Smuggling on Demand for Cigarettes: An Empirical Model," *Health Economics* 2000; 9: 159-170.

301. Data synthesis – The TPSP [U.S. Tobacco Price Support Program] decreases cigarette use by increasing the price of cigarettes. The price increase resulting from the TPSP, however, is small – about one cent per pack. The resulting decrease in cigarette consumption is also very modest – an estimated 0.23%. However, the TPSP creates tobacco quota owners, who have a strong financial interest in opposing measures to reduce smoking. The TPSP also changes the political influence of tobacco farmers by keeping a large number of small farmers in tobacco production.

Conclusions – The negative impact of the TPSP (opposition to tobacco control measures) is probably greater than the positive impact of the programme (reducing smoking). Therefore, the net impact of the TPSP on tobacco control efforts is likely to be negative. (p.176)

Zhang, P., Husten, C. "Impact of the Tobacco Price Support Program on Tobacco Control in the United States," *Tobacco Control* 1998; 7: 176-182.

Tab

302. Results. We estimated that the tobacco price support program increased the price of tobacco leaf by $0.36 per pound. This higher tobacco price translates to a $0.01 increase in the price of a pack of cigarettes and an estimated 0.21% reduction in cigarette consumption. Conclusion. Because the tobacco price support program increases the price of cigarettes minimally, its potential health benefit is likely to be small. The adverse political effect of the tobacco program might substantially outweigh the potential direct benefit of the program on cigarette consumption. (p.746)

Zhang, P., Husten, C., Giovino, G., "Effect of the Tobacco Price Support Program on Cigarette Consumption in the United States: An Updated Model," *American Journal of Public Health* 2000; 90(5): 746-750.

303. The central feature of a cigarette tax as a cigarette policy is the fact that higher cigarette prices reduce both the number of smokers (smoking prevalence) and the number of cigarettes consumed (the incidence of smoking). No controversy surrounds the basic effect of price on demand of cigarettes – after all, the effect of price on quantity is called the first *law* of demand by economists, not subject to the scepticism of any reasonable observer. (p.S27)

Zimring, F.E., Nelson, W. "Cigarette Taxes as Cigarette Policy," *Tobacco Control* 1995; 4 (Supplement): S25-S33.

Ottawa, le 17 juin 2002
2002-052

Le gouvernement annonce une hausse des taxes sur le tabac en vue de décourager le tabagisme

Documents connexes:

- Document d'information.
- Avis de motion de voies et moyens visant à modifier le *Tarif des douanes*, la *Loi sur la taxe d'accise* et la *Loi de 2001 sur l'accise*.

John Manley, vice-premier ministre et ministre des Finances, et Anne McLellan, ministre de la Santé, ont annoncé aujourd'hui une augmentation des taxes fédérales sur les cigarettes de 3,50 $ la cartouche, dans le cadre de la stratégie globale du gouvernement visant à améliorer la santé des Canadiens et des Canadiennes en réduisant l'usage du tabac.

La hausse à l'échelle fédérale entrera en vigueur le 18 juin 2002, parallèlement à des hausses de taxes sur le tabac d'un certain nombre de provinces.

« Grâce à ces hausses, le gouvernement ramène les taux des taxes fédérales sur le tabac aux niveaux en vigueur avant 1994 », a indiqué le ministre Manley.

La ministre McLellan a déclaré : « L'annonce d'aujourd'hui représente une étape réelle vers l'atteinte de l'objectif du gouvernement, qui consiste à décourager le tabagisme. Nous savons que la hausse des taxes sur le tabac a une incidence directe sur la réduction du tabagisme, ce qui contribue à améliorer la santé générale des Canadiens et des Canadiennes. »

Les mesures annoncées aujourd'hui comprennent également une hausse des taxes d'accise fédérales sur les bâtonnets de tabac, sur le tabac fabriqué autre que les cigarettes et les bâtonnets de tabac, et sur les cigares. Les taxes sur les produits du tabac exportés et sur les produits du tabac livrés à des boutiques hors taxes, vendus à titre de provisions de bord ou importés par des résidents canadiens qui rentrent au pays, seront également augmentées.

En 2001, le gouvernement fédéral a mis en place une nouvelle structure de taxation du tabac conçue pour décourager la contrebande et pour faciliter la hausse des taxes sur le tabac à l'appui de ses objectifs en matière de santé. Les organismes d'exécution de la loi continueront de surveiller et d'évaluer l'efficacité de la nouvelle structure de taxation du tabac dans la lutte contre la

contrebande.

Les mesures annoncées aujourd'hui sont exposées en détail dans le document d'information qui figure en annexe.

Le secrétaire d'État (Institutions financières internationales), Maurizio Bevilacqua, a déposé aujourd'hui un Avis de motion de voies et moyens visant à mettre en œuvre ces mesures de taxation.

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Si vous désirez recevoir un courriel vous avisant automatiquement à chaque émission d'un communiqué de presse, veuillez visiter le site Web du ministère des Finances Canada à l'adresse suivante : http://www.fin.gc.ca/scripts/register_f.asp.

Ottawa, le 1er novembre 2001
2001-095

Hausses des taxes sur le tabac en vue de décourager l'usage du tabac

Documents connexes :

- Document d'information.
- Avis de motion de voies et moyens visant à modifier le *Tarif des douanes* et la *Loi sur la taxe d'accise* en vue de mettre en oeuvre certaines mesures concernant les produits du tabac.

Le ministre des Finances, Paul Martin, et le ministre de la Santé, Allan Rock, ont annoncé aujourd'hui des mesures qui consistent à hausser, à compter du 2 novembre 2001, les taxes fédérales sur les produits du tabac, dans le cadre de la stratégie globale du gouvernement visant à améliorer la santé des Canadiens et Canadiennes par la réduction de l'usage du tabac.

Cette hausse entrera en vigueur en même temps que des hausses de taxes provinciales sur le tabac.

« Les mesures que nous annonçons aujourd'hui reflètent l'engagement continu du gouvernement à promouvoir la santé des Canadiens et Canadiennes en haussant les taxes sur le tabac, a déclaré le ministre Martin. Je me réjouis que les gouvernements provinciaux partagent cet objectif et que nous ayons pu collaborer à cette initiative de façon si efficace. »

« Les hausses de taxes annoncées aujourd'hui sont une autre étape importante de la stratégie gouvernementale lancée en avril dernier en vue de décourager l'usage du tabac, surtout chez les jeunes », a indiqué le ministre Rock.

En avril 2001, le gouvernement fédéral a augmenté les taxes sur le tabac et mis en place une nouvelle structure de taxation du tabac comportant notamment une taxe à l'exportation révisée, conçue pour décourager la contrebande.

Les hausses annoncées aujourd'hui ont pour effet de rétablir un taux uniforme de taxe fédérale sur les cigarettes dans l'ensemble des provinces et territoires. Les hausses de la taxe fédérale sont de l'ordre de 2 $ la cartouche de cigarettes destinée à la vente au Québec, de 1,60 $ en Ontario et de 1,50 $ ailleurs au Canada.

De façon parallèle, les gouvernements provinciaux de l'Ontario, du Québec, de la Nouvelle-Écosse, du Nouveau-Brunswick et de l'Île-du-Prince-Édouard augmentent leurs taxes sur les produits du tabac. La taxe provinciale sur les cigarettes augmentera donc de 2,50 $ la cartouche au Québec, au Nouveau-Brunswick et en Nouvelle-Écosse, de 2 $ la cartouche à l'Île-du-Prince-Édouard et de 1,60 $ la cartouche en Ontario.

Les mesures annoncées aujourd'hui comprennent également une hausse de 1,50 $ de la taxe fédérale sur les cartouches de bâtonnets de tabac et les paquets de 200 grammes de tabac haché fin destinés à la vente dans l'ensemble des provinces et territoires.

Les taxes sur les produits du tabac exportés et sur les produits du tabac livrés à des boutiques hors taxes, vendus à titre de provisions de bord ou importés par des résidents canadiens de retour au pays seront également augmentées.

Les organismes d'exécution de la loi continueront de contrôler et d'évaluer l'efficacité de la nouvelle structure de taxation du tabac dans la lutte à la contrebande.

Les mesures annoncées aujourd'hui sont exposées en détail dans le document d'information qui figure en annexe.

Le secrétaire d'État (Institutions financières internationales), Jim Peterson, a déposé aujourd'hui un avis de motion de voies et moyens visant à mettre en œuvre ces mesures de taxation.

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Dernière mise à jour : 2003-02-25 ▲ Avis importants

Ministère des Finances

Le gouvernement de l'Ontario entreprend d'autres mesures destinées à rendre l'Ontario sans fumée

La hausse de la taxe sur le tabac est la troisième étape d'un plan visant à amener les taux d'imposition du tabac en Ontario au niveau national moyen

TORONTO, le 18 janv. /CNW/ - Dans le cadre de sa campagne visant à rendre l'Ontario sans fumée, le gouvernement de l'Ontario augmentera les taxes sur le tabac de 1,25 $ par cartouche à compter de minuit ce soir, a déclaré aujourd'hui le ministre des Finances, M. Greg Sorbara.

"L'annonce faite aujourd'hui par le gouvernement s'inscrit dans le cadre de notre stratégie globale ayant pour but d'éliminer l'usage du tabac, surtout parmi les jeunes, a indiqué M. Sorbara. A la suite de cette augmentation, l'Ontario se rapproche encore plus de son objectif qui consiste à hisser les taxes sur le tabac au taux national moyen."

Cette hausse de la taxe sur le tabac fera grimper le coût d'un paquet de 20 cigarettes d'environ 13 cents et celui d'un paquet de 25 cigarettes, de 16 cents. Le taux pratiqué en Ontario avoisine ainsi la moyenne des taxes sur le tabac imputées à l'échelle nationale.

Le budget provincial de 2004 a renforcé les mesures d'application de la loi contre la fabrication, la vente et l'achat de produits de tabac illicites. Ces mesures englobent divers moyens d'application révisés, tels que de nouvelles dispositions sur les infractions, des amendes plus fortes et des peines d'emprisonnement plus sévères dans le cas de certaines infractions, et donnent aux inspecteurs et les forces de l'ordre accès à de nouveaux outils perfectionnés.

"Nous avons choisi d'instaurer ce changement pendant la Semaine nationale sans fumée, alors que toute la population est déjà davantage sensibilisée aux méfaits du tabagisme, a poursuivi M. Sorbara. Le tabagisme constitue la première cause de décès prématurée et de maladies évitables en Ontario, et il en coûte environ 1,7 milliard de dollars par année en soins de santé pour traiter des maladies directement liées à l'usage du tabac."

Parmi les autres volets de la campagne visant à rendre l'Ontario sans fumée, citons un projet de loi destiné à protéger la population contre la fumée secondaire, en interdisant l'usage du tabac dans tous les lieux de travail et espaces publics, ainsi que diverses initiatives ayant pour but de prévenir l'usage du tabac chez les jeunes. Par ailleurs, le gouvernement verse 1,6 million de dollars à la ligne de Téléassistance pour fumeurs, où sont fournis conseils, matériel d'auto-assistance, soutien et références aux appelants qui essaient d'arrêter de fumer.

Also available in English

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Cabinet de la vice-première ministre et ministre d'Etat à l'Economie - HAUSSE DE LA TAXE SUR L PRODUITS DU TABAC ET INVESTISSEMENTS IMPORTANTS DANS LA LUTTE AU TABAGISME

QUEBEC, le 17 juin /CNW/ - La vice-première ministre et ministre d'Etat à l'Economie et aux Finances, Mme Pauline Marois, a annoncé aujourd'hui une hausse de la taxe sur les produits du tabac. Le taux actuel de la taxe québécoise de 6,55 cents par cigarette sera ainsi porté à 9,05 cents à compter de minuit ce soir. Cette mesure, qui représente une hausse de 5,00 $ par cartouche de 200 cigarettes, s'appliquera également aux autres produits du tabac.

L'augmentation de la taxe sur les produits du tabac a été annoncée de concert avec les gouvernements de l'Ontario et du Nouveau-Brunswick afin de maintenir des prix de vente comparables entre les trois juridictions.

Mme Marois s'est dite "confiante que cette nouvelle hausse de la taxe sur le tabac contribuera à réduire le tabagisme, particulièrement chez les jeunes". Selon les analyses, les hausses annoncées aujourd'hui se traduiront par une réduction globale de 7 % de la consommation.

En rendant publique cette décision, Mme Marois a rappelé que la baisse des taxes sur le tabac en 1994 ne visait qu'un objectif : mettre fin à l'exploitation de réseaux de contrebande. Aujourd'hui, il est possible de revenir à des taux similaires à ceux qui existaient à l'époque compte tenu de la situation dans les autres juridictions et des mesures de contrôle mises en place par les gouvernements.

REINVESTISSEMENTS DANS LA SANTE ET LA LUTTE AU TABAGISME

La vice-première ministre et ministre d'Etat à l'Economie et aux Finances a indiqué que la hausse de la taxe sur les produits du tabac signifiera des revenus additionnels pour le Québec de 185 millions de dollars en 2002-2003 et de 235 millions de dollars sur une pleine année.

Elle a par ailleurs annoncé que les sommes consacrées au "Plan québécois de lutte contre le tabagisme" seront augmentées de 5 millions de dollars cette année et de 10 millions de dollars annuellement par la suite. "Avec ces investissements, le Québec, qui consacrait déjà per capita les sommes les plus élevées au Canada à la lutte au tabagisme, se démarquera encore davantage", a déclaré Mme Marois.

Le ministre délégué à la Santé, aux Services sociaux, à la Protection de la jeunesse et à la Prévention, M. Roger Bertrand, annoncera les mesures spécifiques que le gouvernement entend mettre en place à cet égard.

UNE HAUSSE FEDERALE QUI ACCROIT LE DESEQUILIBRE FISCAL

Par ailleurs, la vice-première ministre et ministre d'Etat à l'Economie et aux Finances tient à souligner qu'elle juge inopportune la hausse de taxe annoncée simultanément par le gouvernement fédéral. Compte tenu du surplus de près de 10 milliards de dollars dont dispose actuellement ce dernier, il aurait été nettement plus approprié que seules les provinces augmentent leur taxe. Le gouvernement fédéral accroît en effet ses revenus alors qu'il a des surplus importants et que tout le monde reconnaît qu'il existe un déséquilibre fiscal croissant au Canada. Elle a demandé que le gouvernement fédéral réinvestisse en totalité, au bénéfice des provinces et par le biais du transfert social canadien (TSCPS), les revenus additionnels de près de 600 millions de dollars découlant de la hausse de la taxe fédérale sur le tabac.

Les modalités d'application de la hausse de la taxe sur les produits du tabac sont exposées dans le "Bulletin d'information 2002-6" rendu public aujourd'hui par le ministère des Finances. Ce bulletin est disponible sur le site Internet du Ministère à l'adresse suivante : www.finances.gouv.qc.ca

ILLUSTRATION DE LA DECOMPOSITION DU PRIX DE VENTE AU DETAIL D'UNE CARTOUCHE DE 200 CIGARETTES - QUEBEC, JUIN 2002
(en dollars)

	Avant augmentation de taxes	Après augmentation de taxes	Ecart
Prix du manufacturier	16,50	16,50	-
Droit et taxe d'accise fédéraux	12,35	15,85	3,50
Taxe québécoise sur le tabac	13,10	18,10	5,00
TPS	2,94	3,53	0,59
Prix de vente au détail	44,89	53,98	9,09
Dont :			
- Taxe québécoise	13,10	18,10	5,00
- Taxes fédérales(1)	15,29	19,38	4,09

(1) Droit et taxe d'accise et TPS.

COMPARAISON INTERPROVINCIALE DES TAXES SUR LES CIGARETTES, JUIN 2002
(en dollars par cartouche de 200 cigarettes)

	Taxe provinciale(1)	Droit et taxe d'accise fédéraux et TPS (2)
Québec	18,10	19,38
Ontario	17,60	19,09
Nouveau-Brunswick	23,65	19,48
Ile-du-Prince-Edouard	22,90	19,72
Nouvelle-Ecosse	25,31	19,59
Colombie-Britannique	30,00	20,21
Terre-Neuve	31,75	20,00
Alberta	32,00	20,35
Manitoba	33,29	20,14
Saskatchewan	35,86	20,35

(1) Incluant les taxes de vente "ad valorem" applicables dans certaines provinces : Ontario (8 %), Nouvelle-Ecosse (8 %), Nouveau-Brunswick (8 %), Manitoba (7 %), Saskatchewan (6 %) et Terre-Neuve (8 %).

(2) Le droit et la taxe d'accise fédéraux sont identiques dans toutes les provinces, soit 15,85 $ par cartouche de 200 cigarettes. Les montants totaux de taxes varient selon les provinces parce que la TPS s'applique sur des prix de vente au détail différents.

REVISION DE LA TAXATION DES PRODUITS DU TABAC AU QUEBEC
TAUX UNITAIRE - JUIN 2002
(en cents)

	Unité	Actuel	Révisé	Ecart
Cigarettes	Cigarette	6,55	9,05	2,50
Tabac en vrac	Gramme	6,55	9,05	2,50
Tabac en feuilles	Gramme	6,55	9,05	2,50
Bâtonnets préformés	Bâtonnet	6,55	9,05	2,50

	Gramme	10,08	13,92	3,84
Cigares (15 cents et moins l'unité)	Cigare	6,55	9,05	2,50
Cigares (plus de 15 cents l'unité)	Cigare	60 %(1)	80 %(1)	20 %(1)

(1)Taux "ad valorem" applicable au prix de vente au détail.

REVISION DE LA TAXATION DES PRODUITS DU TABAC AU QUEBEC
TAUX POUR LE FORMAT COMMERCIALISE - JUIN 2002
(en dollars)

	Unité	Actuel	Révisé	Ecart
Cigarettes	200 cigarettes	13,10	18,10	5,00
Tabac en vrac	200 grammes	13,10	18,10	5,00
Tabac en feuilles	200 grammes	13,10	18,10	5,00
Bâtonnets préformés(1)	200 bâtonnets	13,10	18,10	5,00

(1)Produits à partir de 130 grammes de tabac lorsque le taux unitaire est en cents par gramme.

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la santé mentale ou le Centre manitobain de développement;

d) maison d'hébergement ou foyer de transition;

e) foyer de groupe ou centre de traitement au sens de la *Loi sur les services à l'enfant et à la famille*;

f) autre endroit ou catégorie d'endroits prévu par règlement. ("group living facility")

« **lieu de travail intérieur** » Aire fermée d'un bâtiment, d'une construction, d'une mine ou d'un autre endroit où les employés travaillent, notamment les salles à manger, les toilettes, les couloirs, les salles de repos, les aires d'accueil, les foyers, les vestibules, les ascenseurs, les escaliers mécaniques, les escaliers, les aires d'agrément, les aires d'entreposage, les placards, les buanderies et les garages qu'utilisent les employés ainsi que les autres aires fermées qu'ils fréquentent dans le cadre de leur travail. La présente définition exclut les résidences privées. ("indoor workplace")

« **locaux visés par une licence** » Locaux visés par une licence au sens de la *Loi sur la réglementation des alcools*. ("licensed premises")

« **ministre** » Le ministre chargé par le lieutenant-gouverneur en conseil de l'application de la présente loi. ("minister")

« **produit connexe au tabac** » Papier à cigarette, tube à cigarette, filtre de cigarette, confectionneuse de cigarettes, pipe ou autre chose utilisée avec du tabac et prévue par règlement. ("tobacco-related product")

« **propriétaire** » Personne, notamment un propriétaire ou un employeur, qui dirige les activités se déroulant dans un endroit, une aire ou un véhicule. La présente définition inclut les personnes qui sont sur place et qui dirigent les activités à un moment donné. ("proprietor")

« **restaurant** » S'entend notamment de toute partie d'un café-restaurant, d'une cafétéria, d'un comptoir-sandwiches, d'une aire de restauration ou d'un autre établissement de restauration qui est situé dans un endroit public fermé et qui est ouvert au public, que la totalité ou seulement une partie du local soit visé ou non par une licence. ("restaurant")

« **tabac** » Tabac, sous toute forme que ce soit, destiné à l'utilisation ou à la consommation, notamment les cigarettes, les cigares, le tabac sans fumée et le tabac en feuille. La présente définition exclut les aliments, les drogues et les instruments qui contiennent de la nicotine et auxquels s'applique la *Loi sur les aliments et drogues* (Canada). ("tobacco")

« **véhicule public** » Véhicule automobile servant au transport public de personnes ou de biens. Sont inclus dans la présente définition les autobus, les taxis et les limousines. ("public vehicle")

Exception — aire extérieure destinée à la consommation de boissons ou de nourriture

1(2) Est un endroit public fermé ou un lieu de travail intérieur au sens de la présente loi toute aire extérieure destinée à la consommation de boissons ou de nourriture qui est conforme aux exigences réglementaires et qui fait partie d'un restaurant, de locaux visés par une licence, d'un club privé auquel les membres ou les invités ont accès ou d'un endroit fermé, autre qu'une résidence privée, où se déroule une activité privée ou qui est exploitée conjointement avec les établissements ou l'endroit précités.

L.M. 1994, c. 24, art. 3; L.M. 2002, c. 37, art. 2; L.M. 2004, c. 17, art. 2.

Interdiction de fumer dans les endroits fermés

2(1) Sauf dans la mesure prévue aux articles 3 à 5.1, il est interdit de fumer :

a) dans un endroit public fermé;

b) dans un lieu de travail intérieur;

c) dans une habitation collective;

d) dans un véhicule public;

e) dans un véhicule qui est utilisé pour le travail et qui transporte au moins deux employés.

Responsabilité du propriétaire

2(2) Le propriétaire d'un endroit, d'une aire ou d'un véhicule où il est interdit de fumer en vertu de la présente loi fait en sorte que l'interdiction soit respectée.

L.M. 1994, c. 24, art. 4; L.M. 2004, c. 17, art. 3.

Exception — habitation collective

3(1) Les malades hospitalisés ou les résidents d'une habitation collective, à l'exception d'une habitation qui accueille uniquement des enfants, peuvent fumer dans une pièce distincte si celle-ci, à la fois :

a) est désignée à titre de fumoir par le propriétaire ou le conseil d'administration de l'habitation;

b) n'est pas fréquentée par des malades hospitalisés ni des résidents qui sont non-fumeurs;

c) est complètement fermée par des murs allant du plancher au plafond, par des portes et par un plafond qui la séparent des aires adjacentes où il est interdit de fumer en vertu de la présente loi;

d) a un système de ventilation distinct.

Exception — chambre

3(2) Les clients inscrits et leurs invités peuvent fumer dans une chambre d'hôtel, de motel, d'auberge ou de gîte touristique si les conditions suivantes sont remplies :

a) la chambre est conçue principalement pour y dormir;

b) le propriétaire la désigne à titre de chambre pour fumeurs;

c) elle est complètement fermée par des murs allant du plancher au plafond, par des portes et par un plafond qui la séparent des aires adjacentes où il est interdit de

fumer en vertu de la présente loi;

d) elle a un système de ventilation distinct.

Disposition transitoire

3(3) L'obligation d'avoir un système de ventilation distinct prévue au paragraphe (1) ou (2) ne vise que les chambres construites ou considérablement rénovées après l'entrée en vigueur du présent article.

L.M. 1994, c. 24, art. 5; L.M. 1995, c. 33, art. 20; L.M. 2004, c. 17, art. 3.

Exception — débit de tabac

4 Le propriétaire d'un débit de tabac ainsi que ses employés et ses clients peuvent fumer pour essayer un produit si le débit :

a) d'une part, est complètement fermé par des murs allant du plancher au plafond, par des portes et par un plafond qui le séparent des aires adjacentes où il est interdit de fumer en vertu de la présente loi;

b) d'autre part, a un système de ventilation distinct pour autant que ses activités commerciales aient initialement débuté après l'entrée en vigueur du présent article.

L.M. 1994, c. 24, art. 6; L.M. 2004, c. 17, art. 3.

Propagation de la fumée

5 Le propriétaire d'un endroit où il est permis de fumer en vertu de l'article 3 ou 4 prend des mesures raisonnables pour réduire la propagation de la fumée dans les aires où il est interdit de fumer.

L.M. 1994, c. 24, art. 7; L.M. 2004, c. 17, art. 3.

Exception — pratiques traditionnelles autochtones

5.1 La présente loi n'a pas pour effet d'interdire :

a) aux Autochtones d'utiliser du tabac dans le cadre de pratiques ou de cérémonies traditionnelles autochtones de nature spirituelle ou culturelle;

b) aux personnes qui ne sont pas des Autochtones d'utiliser du tabac en compagnie d'Autochtones dans le cadre de telles pratiques ou cérémonies.

L.M. 2004, c. 17, art. 3.

Arrêté municipal

6(1) Malgré les dispositions de la présente loi, un conseil municipal peut, par arrêté municipal, limiter ou interdire l'usage du tabac dans tout endroit public fermé de la municipalité.

Incompatibilité

6(2) Les dispositions de la présente loi ou de ses règlements l'emportent sur les dispositions incompatibles des arrêtés pris par la Ville de Winnipeg ou une autre municipalité en vertu du paragraphe (1) ou d'une autre loi de la Législature. Toutefois, les dispositions des arrêtés l'emportent si elles sont plus strictes ou plus restrictives que les dispositions de la présente loi ou de ses règlements ou si leur application est plus étendue que celle des dispositions de la présente loi ou de ses règlements.

Affichage par le propriétaire

6.1(1) Conformément aux règlements, le propriétaire d'un endroit, d'une aire ou d'un véhicule où il est interdit de fumer en vertu de la présente loi y place en permanence des affiches faisant état de l'interdiction.

Enlèvement interdit

6.1(2) Seul le propriétaire ou une personne agissant sous ses directives peut enlever, modifier,