

RPPL No. 8-27

EIGHTH OLBIIL ERA KELULAU

RPPL NO. 8-27

First Regular Session, January 2009 (Introduced as House Bill No. 8-8-1, HD2, SD2, CD1, PD1)

AN ACT

To adopt measures consistent with the objective of the World Health Organization's Framework Convention on Tobacco Control (FCTC), to which the Republic is a party, to protect present and future generations against the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke; to amend, repeal and replace sections of Chapter 10 of Title 11 of the Palau National Code and for other related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Legislative findings and purpose. Finding that the use of tobacco can cause devastating health and economic losses to individuals, families and the community, that the diseases associated with the use of tobacco result in lost productivity, premature deaths, and significant healthcare costs, and that an alarming number of children, youth and adults in Palau are current users of any tobacco product, the Olbiil Era Kelulau believes it is time to enact legislation to protect the health and well being of Palau's citizens by updating the current tobacco-related laws codified in Chapter 10 of Title 11 of the Palau National Code and enacting additional appropriate and effective laws.

Additionally, the Olbiil Era Kelulau finds that the Republic of Palau's laws relating to the licensing and sales of tobacco need to be revised and updated for more effective and efficient licensing and enforcement.

The Republic's current laws regulating tobacco control originated from the Alcoholic Beverage and Tobacco Products Control Act, and alcohol and tobacco control laws are combined in the same chapter of the PNC. This bill separates the tobacco laws from the alcohol laws and

creates new tobacco control laws which reflect the Republic's commitment to the World Health Organization's Framework Convention on Tobacco Control.

Section 2. Definitions. Unless otherwise stated:

(a) "Adult care facility" means all land, buildings, structures and improvements within the boundaries of any real property which is used primarily for the care of adults with special needs or senior citizens.

(b) "Childcare facility" means all land, buildings, structures and improvements within the boundaries of any real property which is used primarily for childcare.

(c) "Commercial purpose" is the intent to obtain direct or indirect financial gain from the sale, distribution, exportation, importation, or manufacture of tobacco.

(d) "Distribute" means to sell, give, serve, supply, exchange, convey, consign, deliver, furnish, or transfer tobacco to another for a commercial purpose, or as a sample, gift, or prize with or without consideration.

(e) "Due diligence" means conducting a reasonable, state-of-the-art investigation for the purpose of ascertaining whether a legal or natural person is complying with or can reasonably be expected to comply with all applicable laws and regulations relating to the elimination of illicit trade in tobacco products.

(f) "Educational facility" means all land, buildings, structures, and improvements within the boundaries of any real property, which is used primarily for educational purposes.

(g) "Elaus" means a whole or divided betel nut that is distributed singly either already prepared with all the additives such as lime, leaf, and tobacco or with additives to be added by the consumer.

(h) "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

(I) "Enclosed" Area/Place/Space means all space between a floor and ceiling which is enclosed on all sides by solid wall or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar

structures.

(j) “Healthcare facility” means all land, buildings, structures, and improvements within the boundaries of any real property, which is used primarily for medical or healthcare purposes, including diagnosis, prevention and treatment of diseases or physical and mental disabilities.

(k) “Manufacture” means to fabricate, process or package and/ or label tobacco for commercial purposes.

(l) “Minor” is a person younger than 21 years of age.

(m) “Person” means any individual, partnership, corporation, or other association of individuals, or of any group or combination of the above acting together or as a unit, and includes

any proprietor, firm, partnership, corporation, franchise, organization, agency, association or institution.

(n) “Purchase” means to obtain tobacco for money or other valuable consideration.

(o) “Smoking” means inhaling, exhaling or handling ignited tobacco.

(p) “Sports facility” means all land, buildings, structures, and improvements within the boundaries of any real property which is used primarily for the general public to engage in sporting activities such as to assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(q) “Tobacco” means the processed leaves of plants from the genus *Nicotiana* or species *tabacum* used for smoking, chewing or as snuff, and includes all products which contain tobacco in any form in an amount that is more than an incidental ingredient or component and that is intended for human consumption and may include all parts and materials, such as filters, rods and similar matter; or any product other than tobacco that contains nicotine in an amount that is more than incidental and is intended for human consumption, including but not limited to nicotine water, nicotine candy, e-cigarettes and dissolvable tobacco .

Section 3. License required; period of effectiveness.

(a) No person shall distribute, export, import or manufacture tobacco in the Republic without a valid license issued by the Minister of Finance in accordance with the provisions of this Act and regulations promulgated thereunder.

(b) No person shall distribute tobacco products for resale to any person who does not have a valid tobacco license.

(c) No person shall be issued a distributor license under this act without a business license authorized under 40 PNC § 1501 as a prerequisite to engage in business in the Republic.

(d) All tobacco licenses authorized under this act shall expire at the end of the fiscal year.

Section 4. Classes of tobacco licenses. The Minister of Finance is authorized to issue tobacco licenses as follows:

(a) Tobacco Distributor License-Retail: permitting distribution of tobacco to consumers.

(b) Tobacco Distributor License-Wholesale: permitting distribution of tobacco to only

persons in the Republic of Palau with a valid tobacco retail license issued pursuant to this Act.

(c) Tobacco Distributor License-Import: permitting importation of tobacco into the Republic of Palau for commercial purposes.

(d) Tobacco Manufacturer's License: permitting fabrication, processing or packaging and/or labeling tobacco products.

Section 5. License Fees.

(a) The initial license fees shall be:

(1) Tobacco Distributor License-Retail: \$50.00

(2) Tobacco Distributor License-Wholesale: \$150.00

(3) Tobacco Distributor License-Import: \$200.00

(4) Tobacco Manufacturer License: \$200.00

(b) Fees for licenses which become effective after the beginning of the fiscal year shall be prorated on a quarterly basis.

Section 6. Licenses for multiple activities: separate places of business.

(a) A person engaged in two or more of the activities set forth in Section 5 of this Act must obtain a license for each activity.

(b) A separate and appropriate license must be obtained for each separate place of business.

Section 7. Licensing limitations. Licenses shall be issued only in accordance with this Act and regulations promulgated thereunder.

Licenses are not transferable. A licensee is limited to engaging in only the commercial activities licensed as stated in the licensing document, and any regulations promulgated thereunder. The license is valid only

for the conduct of business on the premises as specified in the application for the license.

Section 8. License application, review, denial and appeal.

(a) The Minister of Finance shall review applications for tobacco retail, wholesale, and import licenses and renewal licenses and approve or deny each application. The Minister of Finance shall maintain a list of all licenses issued and denied, which shall be made available for inspection, by any person during regular business hours. The list shall include at a minimum the name of the licensee, the class of license, the premises licensed, the date of initial issuance, and the date(s) of any

suspension(s) or revocation(s), if any, and any information deemed relevant by the Minister.

(b) Each application shall be accompanied by a non-refundable application fee in an amount set by this Act and regulations promulgated thereunder. No license shall be processed unless the applicant has deposited the full amount due for the license and the non-refundable application fee with the National Treasury.

(c) If a license cannot be granted because the application lacks sufficient information or further information is needed, the Minister of Finance shall immediately inform the applicant in writing of the information required within 15 days of reviewing the application. Such notice shall be documented and kept in the licensee's application file.

(d) Applicants denied a license may appeal the denial to the Trial Division of the Supreme Court in accordance with Title 6 of the Palau National Code, the Administrative Procedures Act.

(e) Applicants denied a license may reapply at any time.

Section 9. Regulations.

(a) The Minister of Finance shall promulgate regulations prescribing (1) the process to apply for a retail, wholesale or import tobacco license or renewal license, the information to be included in license application forms, the cost of license application fees, and the procedure for collecting these fees;

(2) criteria upon which license applications will be denied or approved;

(3) records and documents which a licensed business must maintain relating to the business's licensed activities;

(4) dimensions, characteristics and wording for signs licensed

establishments must post related to the prohibition of sales to minors and for signs warning of tobacco-related diseases pursuant to Section 12 of this Act;

(5) areas where smoking shall be restricted in enclosed places of employment pursuant to Section 14(a) of this Act;

(6) measures to identify, investigate and prevent illicit trade in tobacco products pursuant to Section 17(b) of this Act.

(b) All regulations promulgated under this Act shall be promulgated pursuant to the

provisions of the Administrative Procedures Act of Title 6, Chapter 1 of this Code and when issued shall have the force and effect of law.

(c) The Minister of Finance shall promulgate all regulations within 180 days of the enactment of this law. Regulations on illicit trade shall be updated within 180 days of ratification of the WHO Protocol on Illicit Trade.

Section 10. Posting licenses and signs. Every person licensed under subsections 5(a), 5(b), 5(c) of this Act shall post the original license(s) in a conspicuous place on the licensed premises and shall post signs regarding the prohibition of sales to minors and regarding tobacco-related health issues. The Minister of Finance shall promulgate regulations regarding the signs pursuant to Section 10 of this Act.

Section 11. Tobacco advertising, promotion and sponsorship prohibited.

(a) No person shall advertise or otherwise promote any tobacco, brand, manufacturer or seller by any means, directly or indirectly, that is intended to have or is likely to have the direct or indirect effect of promoting the purchase or use of tobacco or a tobacco brand, or of promoting a tobacco manufacturer or seller. For purposes of this Section, advertisements and promotions include words, messages, mottos, slogans, letters, numbers, pictures, images, graphics, sounds, or any other auditory, visual, or sensory matter, in whole or part, that are commonly identified or associated with a tobacco, brand, manufacturer, or seller. This prohibition includes a total ban on any display and on the visibility of tobacco products at points of sale, but does not include the broadcast of television programming generated from outside Palau.

(b) Notwithstanding the provisions of subsections (a), the exposure of

tobacco or a tobacco package at the Palau National Airport in any store selling tobacco duty free shall be allowed.

(c) Brand-stretching prohibited.

(1) No person shall advertise, display for sale or distribution, or distribute any non- tobacco item that contains any writing, picture, image, graphic, message, or other matter, in whole or part, that is commonly identified or associated with a tobacco brand, manufacturer, or seller. For the purposes of this provision, non- tobacco items include but are not limited to such things as clothes, caps, bags, umbrellas, ashtrays, matches, lighters, coasters, dishes, display racks, clocks, or sales counter mats.

(2) No person shall display any name, writing, picture, image, graphic, message, or other matter, in whole or part, that is commonly identified or associated with tobacco brand, manufacturer or seller on a building, such as a club, restaurant, stadium or other place, which is not primarily a tobacco business.

(3) No person shall manufacture or distribute any product designed for or likely to appeal to children that evokes an association with a tobacco product, including but not limited to, candy or gum cigarettes or other sweets or snacks in the form of tobacco products.

(d) Tobacco sponsorships prohibited. No person shall cause the tobacco sponsorship of any event. For purposes of this section sponsorship means the public attribution, acknowledgment, association or identification, for commercial purposes, of a tobacco manufacturer, brand, or product with, on, or in connection with:

(1) an entertainment, sporting, recreational, educational, cultural, or other public event or work;

(2) a person or team participating in such an event or work, including his or her equipment, clothing and accessories;

(3) a service provided or contribution made by a tobacco manufacturer or seller; or

(4) a building, institution, stadium, organization or other entity that is not a tobacco manufacturer or seller.

(e) Tobacco sweepstakes, contests, rebates, prohibited. The operator of a business or a distributor of tobacco products may not:

(1) supply or distribute tobacco free of charge or furnish tobacco for promotional purposes of any kind to consumers;

(2) reduce the retail price of tobacco on the basis of quantity, than as part of regular marketing operations, or offer tobacco as a gift, prize, or free of charge in exchange for a coupon or otherwise without charge, or grant a rebate on the market price of tobacco to consumers;

(3) offer consumers gifts, cash prizes, giveaways or a right to participate in a lottery,

contest, sweepstakes or game or any other form of benefit, as consideration for a purchase of tobacco or on presentation of proof of purchase of tobacco.

Section 12. Prohibition on vending machine sales. It shall be unlawful to use a vending machine to distribute or attempt to distribute any tobacco products.

Section 13. Restrictions on Smoking Tobacco in Public Places.

(a) Smoking restricted in enclosed places of employment.

(1) Smoking shall be prohibited in all enclosed places of employment, including all government owned or leased or funded offices, facilities and vehicles, enclosed indoor areas of airports, auditoriums, banquet facilities and meeting rooms, restaurants, bars/clubs, hotels/motels, lobbies, movie theaters and entertainment venues, private offices, commercial office buildings, elevators, hallways, cafeterias, employee lounges, stairs, restrooms, company vehicles, commercial buses, taxis, other public conveyances, and all other enclosed facilities, except as provided in Section 13(a)(2).

(2) The prohibition described in Section 13(a)(1), above, shall not apply to the following establishments or areas:

(I) Guest room accommodations in a hotel, motel, or similar transient lodging establishment. Hotels may designate smoking and non-smoking guest rooms at their discretion.

(ii) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

(iii) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.

(iv) House boats, or other vessels or ships which individuals use as a personal living residence.

(v) Any outdoor area of a restaurant, bar, club, hotel, or motel, provided the outdoor area is not enclosed.

(vi) Any portion of a restaurant, bar, club, hotel or motel which is designated

as allowing smoking and in which the smoking area is structurally separated from the non-smoking area and vented in a manner to prevent circulation of air from the smoking area into the non-smoking area.

(b) The smoking of tobacco products is prohibited, without exception, within the interiors, and on or about the indoor and outdoor premises or grounds of:

(1) all educational facilities;

(2) all sports facilities;

(3) all childcare and adult care facilities;

(4) all healthcare facilities in the Republic; and

(5) all areas within the designated property or compound in which functions, conferences, or events related to education/school, sports, childcare, adult care or healthcare are being carried out.

Section 14. Prohibition of smoking on airline flights between points in Palau.

(a) No person shall smoke any tobacco product on board the aircraft of any flight that takes off and lands within Palau, from the point of embarkation to the point of debarkation, for the duration of the flight.

(b) Notwithstanding any other provision of this section, the prohibition in this section shall be enforced by the airline personnel operating the aircraft in the same manner as any other rule or regulation authorized to be enforced by airline personnel in regard to passenger behavior on board aircraft.

Section 15. Illicit trade in tobacco products.

(a) All forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and contraband cigarettes are prohibited.

(b) The government of the Republic of Palau, as appropriate and in accordance with national law, will promote cooperation between national agencies, as well as relevant regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation

at regional and sub-regional levels to combat illicit trade of tobacco products.

Section 16. Enforcement. Enforcement of this Act shall be through the issuance of citations for violations.

(a) The enforcement of this Act shall primarily be the responsibility of the Bureau of Public Safety of the Ministry of Justice;

(b) The enforcement of sections 14 and 15 will be the primary responsibility of the Bureau of Public Health in the Ministry of Health, and assisted by the Bureau of Public Safety of the Ministry of Justice.

(c) Responsibility for enforcement of Section 17 will primarily be with the Bureau of Revenue, Customs and Taxation of the Ministry of Finance and assisted by the Bureau of Public Safety of the Ministry of Justice.

Section 17. Law enforcement exemption. No person, including minors, shall be held criminally or civilly liable for engaging in conduct which would otherwise constitute a violation of this Act if the conduct is in furtherance of an active law enforcement investigation authorized in writing by the Minister of Justice or to determine the rate of tobacco sales violations. This exemption applies if such person is:

(1) a law enforcement officer; or

(2) acting at the direction of a law enforcement officer.

(3) a participant in a survey to determine rate of sale violations

Section 18. Penalties.

(a) License, records, and sign violations:

(1) Every person who violates, assists in violating, or fails or refuses to comply with:

(i) Sections 3, 6, 7 and 12 and regulations promulgated under Section 9(a)(3) shall be fined up to \$5,000 but not less than \$1,000, or imprisoned not more than 15 days or both, and shall be required to pay the appropriate license fee, if any;

(ii) Section 10 of this Act shall be fined up to \$500 but not less than \$100, or imprisoned not more than 7 days, or both.

(2) The criminal penalties imposed under this section shall be in addition to any civil penalty imposed under law or regulation.

(b) Advertising:

(1) Every person who violates, assists in violating, or fails or refuses to

comply with:

(I) Section 11 shall be fined up to \$20,000 but not less than \$1,000, or imprisoned not more than 30 days, or both;

(2) The criminal penalties imposed under this section shall be in addition to any civil penalty imposed under law, or any remedial action mandated by statutes, regulation, or court of competent jurisdiction

(3) It shall not be a defense to Section 11 that the management official did not have knowledge of the violation or was not present on the premises at the time the violation occurred.

(c) Smoking in places of employment, in schools, sports facilities, child or adult care facilities, and healthcare facilities. Every person who violates Section 13 (a) or (b) shall be fined up to \$100 but not less than \$25.

(d) Smoking on airline flights. Every person who violates, assists in violating, or fails or refuses to comply with Section 14 shall be fined up to \$1,000 but not less than \$100 or imprisoned not more than 7 days or both; shall be fined up to \$10,000 but not less than \$1,000 or imprisoned not more than 15 days or both.

(f) Threats of harm. Every person or entity that retaliates with threats of physical or economic harm against: (1) someone who is implementing or complying with provisions of this Act; or (2) someone asserting his or her right to a smoke-free environment; or (3) someone reporting any violation under this Act shall be fined up to \$5,000 but not less than \$1,000, or imprisoned not more than 15 days, or both.

(g) Illicit trade in tobacco products. A person who violates, assists in violating, or fails or refuses to comply with Section 15 shall be fined up to \$50,000, or imprisoned not more than five years, or both. Any contraband, counterfeit or illicit tobacco product may be seized by any person authorized to issue citations and make arrests pursuant to Section 16, and destroyed without compensation to the producer, owner, shipper or any other person according to promulgated regulations and procedures.

Section 19. License Revocation.

(a) In addition to any court-imposed sanction, the Minister of Finance shall revoke a license issued under this Act if the licensee:

(1) is cited two times for violations of this Act within the same fiscal year;

(2) misrepresents a material fact in obtaining a license;

(3) is convicted of a felony; or

(4) fails to maintain records as required pursuant to this Act.

(b) Fees for a license shall not be refunded if a license is revoked.

Section 20. Disposition of collected fines and fees. All fines and license fees collected pursuant to this Act shall be deposited in the National Treasury. In any case in which the Bureau disapproves an application for an original license or renewal license, the Director of the Bureau of the National Treasury shall return the license fee deposited with the National Treasury to the applicant. The Director of the Bureau of National Treasury shall keep a record of all fees collected pursuant to this chapter and shall submit a report to the Olbiil Era Kelulau each year during its October regular session summarizing such collections and payments.

Section 21. Prohibitions on distribution, purchasing manufacturing.

(a) No person shall distribute, export, import or purchase for personal use, or display tobacco:

(1) using mail order or internet sales;

(2) inside, or within the premises of any childcare, healthcare, educational, or sports facility;

(3) through a vending machine;

(4) for sale in such a way that a consumer may handle any tobacco directly prior to purchase without the assistance of a sales clerk or other employee of the seller;

(5) unless it is contained in an original package;

(6) as free samples, in return for the purchase or sales of goods, or as part of any giveaways;

(7) to any individual who is under 18 years of age; including offering to purchase

tobacco for a minor;

(8) to any individual who does not present a driver's license or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older, contains a likeness of the individual, and appears on its face to be valid, unless the licensee or employee knows the person to be at least 30 years of age.

- (9) using or employing any minor to handle any tobacco product;
- (10) in single units or pieces, or small packets (less than 20 cigarettes) which increase the affordability of such products to minors;
- (b) No person shall distribute rolling papers to any minor;
- (c) No person shall sell elaus to any minor;
- (d) Compliance with the provisions of this Act shall not be construed so as to relieve tobacco manufacturers or sellers of any common law or statutory duty to fully warn consumers of all dangers associated with tobacco use, nor shall it be admissible as evidence in any action under RPPL 5-31, as amended.

Section 22. Amendment. 11 PNC Chapter 10 is hereby amended as follows:

“

§ 1015. Powers and duties of Bureau of Commercial Development regarding alcoholic beverage.

. . . .

(a) The Bureau shall have the power to license the sale of alcoholic beverages in the Republic, and to suspend, revoke and reinstate such license;

. . . .

(g) The Bureau . . . and such legislation related to the consumption and sale of alcoholic beverages which the Bureau believes is in the public interest;

“”

“§ 1018. Records and reports.

The Bureau shall keep records. . . The Bureau shall render a report to the President and Olbiil Era Kelulau no later than 30 days after the end of each fiscal year, setting forth its alcoholic

beverage control activities for the preceding fiscal year, based on such records. . . .

“”

“§ 1031. License required.

No person shall sell alcoholic beverages in the Republic without a valid license issued by the Bureau”

“§ 1032. Issuance of licenses.

Licenses to sell alcoholic beverages , wholesale or retail. . .”

“§ 1033. Classes of licenses.

....”

“§ 1034. License fees.

....

(e) club license: \$125.00; and

(f) special events license: \$25.00 per issue.

....”

“§ 1038. Review of license application.

Upon receipt of an application....on the sale of alcoholic beverages the Bureau shall....

....”

“§ 1041. Distribution of license fees.

The wholesale alcoholic beverage license fees collected . . . The fees collected from the classes of retail alcoholic beverage licenses and issued pursuant to this chapter”

“§ 1042. Prohibitions against licensing.

....”

(d) No license shall be renewed or reissued . . .on the sale of alcoholic beverages that are payable by him under provisions of Division 2 of Title 40 of this Code.

....”

Section 23. Repealer. 11 PNC Chapter 10, §§ 1071 through 1074, 1088 and 1089 are hereby repealed in their entirety.

Section 24. Transition Provisions. Sections 2-23 of this Act shall take effect one hundred

and eighty (180) days following the effective date .

Section 25. Effective date. Unless otherwise provided for in this Act shall take effect upon its approval by the President of the Republic of Palau, or upon its becoming law without such approval.

PASSED: July 28, 2011

Approved this 19th day of August , 2011.

/s/

HE Johnson Toribiong

President

Republic of Palau