

TOBACCO CONTROL ACT 2013

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REPUBLIC OF KIRIBATI
(No. 1 of 2013)

I assent,

Arute Tung
Beretitenti

17 May, 2013

AN ACT TO PROHIBIT ADVERTISING AND PROMOTION OF TOBACCO PRODUCTS, TO REGULATE THE LABELLING OF TOBACCO PRODUCT PACKAGES, TO REGULATE THE CONTENTS OF TOBACCO PRODUCTS, TO IMPOSE RESTRICTIONS ON THE SALE OF TOBACCO PRODUCTS, TO RESTRICT SMOKING IN CERTAIN PUBLIC PLACES AND FOR ANCILLARY PURPOSES.

Commencement
2013

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

PART I – PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Tobacco Control Act 2012.

(2) This Act shall come into force on such date as the Minister may by notice appoint.

2. Interpretation

In this Act, unless the context otherwise requires –

'amusement centre' means any building, structure or any other such place, whether temporary or permanent and whether partially or completely enclosed, in or at which public amusement takes place and to which the public are admitted with or without any payment;

'authorized officer' means a person appointed under section 19;

'brand element' includes the brand name, trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with those used for any brand of tobacco product;

'cigarette' means a tobacco product comprising a roll of cut tobacco, enclosed in paper;

'clinic' means any building used or intended to be used by a medical practitioner, dental practitioner or any other person for the diagnosis or treatment of persons suffering from, or believed to be suffering from, any mental or physical disease and includes any such place operated by the Government;

'designated smoking area' means an area that is designed for smoking under section 16(2)'

'hospital' means any building in which two or more patients are or may be maintained at the same time and includes any such place operated by the Government'

'Minister' means the Minister responsible for health;

'nimoko' means a tobacco product comprising a roll of cut tobacco enclosed in a *rauara* (a thin membrane of a dried pandanus leaf) or a paper;

'office' means a place in which a person is employed, directly or indirectly, to do any clerical, administrative or professional work in connection with any business carried on by the occupier of that place;

'package' means the container, receptacle or wrapper in which a tobacco product is sold or displayed for sale, and includes a package that contains smaller packages;

'promotion' is the practice of fostering awareness of and positive attitudes toward a tobacco product, brand or manufacturer for the purpose of selling the product or encouraging tobacco use, through various means including direct advertisement,

discounts, incentives, rebates, free distribution, and promotion of brand elements through related events and products through a public medium of communication;

'public' includes a section of the public;

'public amusement' means any game of any kind whatsoever provided for the public in which a member or members of the public may take part;

'Regulations' means regulations made under section 31;

'restaurant' means any place, or any part thereof, where the principal business is the serving of meals or refreshment to the public for consumption at such place, and includes any such room or area on a watercraft;

'sell' includes –

- a) barter or exchange;
- b) offer or expose for sale, barter or exchange;
- c) supply, or offer to supply, in circumstance in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; or
- d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain;

'smoke-free zone' means the area of a licensed premises or restaurant designated as a smoke-free zone under section 17;

'smoking' with its grammatical variations, means puffing or inhaling and expelling the smoke of any tobacco product and includes the holding of, or control over, any ignited tobacco product;

'sports stand' means any building, erection or structure, whether temporary or permanent, which is partially or completely enclosed and which is used for the seating of members of the public, with or without payment, primarily to view any sporting contest, but does not include any such building or structure belonging to any club, association, institution or other body intended for the benefit primarily of its members;

'tobacco' means any product obtained from the leaf of the *Nicotiana tabacum* plant or other related plants;

'tobacco product' means any product composed in whole or in part of tobacco which is designed for human consumption by any manner;

'vending machine' means a machine or device that is constructed to contain tobacco products and which can automatically retail any tobacco product upon the insertion of a coin, token, banknote or similar object into the machine or device;

'workplace' means any indoor or enclosed area that is occupied by an employer and that employees usually frequent during the course of their employment, and includes any cafeteria, corridor, lobby, stairwell, toilet and washroom, and also includes any enclosed common areas and employer -provided vehicles normally used by employees, but does not include any place of residence occupied by the employer or the employee.

PART II – PROHIBITION OF ADVERTISING AND PROMOTION OF TOBACCO PRODUCTS

3. Prohibition of Tobacco product advertising and promotion

- 1) Any person who promotes, or causes to be promoted by any other person, a tobacco product through direct or indirect means, including through sponsorship of an organization, service, physical establishment or vehicle of any kind, or event, commits an offence.
- 2) Any person who sells, promotes or distributes, or causes to be sold, promoted or distributed, any item other than a tobacco product which bears the brand name (alone or in conjunction with any other word) or brand element of any tobacco product commits an offence.
- 3) Any person who resides in, or operates from, Kiribati who does any of the things listed in subsections (1) and (2) so that tobacco-related promotions are brought to the attention of persons resident in another country also commits an offence.
- 4) Subsection (1) does not apply to the promotion of a tobacco product included in any book, magazines or newspaper printed outside Kiribati, or any film or video recording made outside Kiribati, or in any radio or television transmission originating outside Kiribati, unless –
 - a) the principal purpose of the book, magazine, newspaper, film, video recording is the promotion of a tobacco product;

- b) the book, magazine, newspaper, film, video recording is intended for sale, distributing or exhibition primarily in Kiribati; or
 - c) in the case of the promotion of a tobacco product in any radio or television transmission, the transmission is targeted primarily at an I-Kiribati audience.
- 5) Nothing in subsection (1) applies to the following:
- a) the display of a retailer's name or trade name on the exterior of a retailer's place of business, in accordance with any regulations made under this Act, even if that name or trade name contains a word or phrase that relates to tobacco products or to tobacco smoking, provided that wording does not include a reference to brand elements or, if the name of a seller is commonly associated with tobacco products, the name of that seller;
 - b) the display of tobacco products inside a retailer's or wholesaler's place of business provided that the display complies with any regulations made under this Act;
 - c) commercial communications by person in the tobacco growing, manufacturing, importing, exporting, distribution, selling or trading business directed solely at other persons in the tobacco growing, manufacturing, importing, exporting, distribution, selling or trading business;
 - d) commentary, opinion, report, editorial, or political discourse related to tobacco products or sellers, provided that that such activities are not intended for promotion, or made in exchange for or in the expectation of remuneration, reward or emolument of any sort or other consideration(whether direct or indirect) from any person involved in the manufacture, import, distribution or sale of tobacco or any of their agents; or
 - e) depiction of or reference to a tobacco product or brand made in any artistic, literary, scientific, educational, or entertainment production, performance, writing or other work, provided that that depiction or reference is not intended for promotion, or made in exchange for or in the expectation of remuneration, reward or emolument of any sort or other consideration(whether direct or indirect) from any person involved in the manufacture, import, distribution or sale of tobacco or any of their agents.

4. Prohibition on giving or distribution free samples, etc.

Any person who, for the purpose of inducing or promoting the sale of any tobacco product –

- a) offers, gives or distributes to any person a free sample of the tobacco product; or
- b) offers any gift or cash rebate or the right to participate in any contest, lottery or game to the purchaser of a tobacco product in consideration of the purchase thereof, or to any person in consideration of the furnishing of evidence of such a purchase, commits an offence.

PART III – PACKAGING AND LABELLING

5. Packaging and labeling requirements

Subject to section 7 of this Act, any person who sells, distributes, displays for sale or distribution, import or export, any tobacco product excluding the nimoko, that is not packaged and labeled in a manner that complies with all requirements of this Act and with those of any of the Regulations made under this Act commits an offence.

6. Compulsory health messages and other information

- 1) Subject to section 7 of this Act, a person must not sell, distribute, display for sale or distribution, import or export any tobacco product, excluding the nimoko, unless it has, permanently affixed on its package, or permanently affixed to an individual wrapper in the case of cigars, the health messages and other information prescribed by the Regulations made under this Act.
- 2) The Regulations made under subsection (1) shall provide that every package of tobacco products must carry health messages and other information, as specified in the regulations and that those health messages and other information must:
 - a) be rotated so that a range of messages and other information is displayed on all tobacco brands and brand variants;
 - b) be large, clear, visible and legible;
 - c) be in I-Kiribati and/or English; and

d) take up a minimum of 30 percent of the principal display areas of tobacco packages.

- 3) The Regulations may provide that every package of every tobacco product sold in Kiribati must carry messages that are in the form of, or include, pictures or pictograms.
- 4) All packages of tobacco product imported for sale or sold in Kiribati must carry a statement that the product is intended for sale in Kiribati.
- 5) A person who contravenes this section commits an offence.

7. Recognized acceptable standard

- 1) For the purpose of this section, substantially to the same effect as required by the Act means health messages and other information, or constituent information, which, while differing in some respects from the requirements of this Act are considered by the Minister, acting on the advice of the Cabinet, to be, in all material respects, of a standard which warns and informs to a standard which meets or exceeds that required by sections 6(2), 6(4), 8 and 9 of this Act and by any Regulations made under this Act.
- 2) Notwithstanding section 6 of this Act, but subject to their being the subject of a Gazette notice made pursuant to subsection (3) of this section, tobacco products that are packaged or labeled, and that carry health messages and other information, substantially to the same effect as required by the Act may be sold, distributed, displayed for sale or distribution, import or export.
- 3) The Minister, acting on the advice of the Cabinet, may, by notice published in the Gazette, state that tobacco product labeling and the packaging, and the health messages and other information on that packaging, of identified tobacco product, imported from an identified country or countries is regarded by him as being substantially to the same effect as required by the Act.

8. Constituent and additives disclosures required to be displayed on all tobacco product packages

- 1) Subject to section 7 of this Act, any person who sells, distributes, displays for sale or distribution, import or export any tobacco product, excluding the

nimoko, without it having, permanently affixed on its package, or permanently affixed to an individual wrapper in the case of cigars, a disclosure in the form and manner prescribed by regulations made under this Act of any or all of the following:

- a) a list of those constituents of the product which are generally recognized as harmful including but not limited to tar, nicotine, and carbon monoxide;
 - b) a message about the health hazards of constituents of tobacco products;
 - c) the emission of the product, as applicable;
 - d) the product's additives;
- commits an offence.

2) Any tobacco products to which subsection (1) do not apply and that have been prepared for retail in Kiribati, may be sold, provided that the place from which the sale of the tobacco products are made displays the requirement in subsection (1) above in a form and manner prescribed by the Regulations made under this Act.

3) A person who contravenes the requirement under subsection (3) commits an offence and shall be liable to a fine not exceeding \$50 for the first offence and \$300 for second and subsequent offences,

9. Misleading labeling prohibited

- 1) Any person who:
 - a) sells;
 - b) distributes;
 - c) displays for sale or distribution;
 - d) imports; or
 - e) exports

any tobacco product of which the package or labeling promotes that tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression of the characteristics, health effect, hazards or emissions of that product or which includes any brand element or any other written terms, descriptor, symbol or sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products, commits an offence.

2) The Regulations may prescribe words and terms, both in English and I-Kiribati, which are not to be used on the package or labeling of a tobacco product and

the use of any word or term so prescribed on the package or labeling of a tobacco product shall be deemed to be misleading for the purpose of subsection (1).

PART IV – TOBACCO PRODUCTION CONTENT AND DISCLOSURE

10. Control on the content of tobacco products

Any person who manufactures, imports, exports, sells or otherwise distributes any tobacco product that does not comply with the requirements regulating the additives, constituents or emissions of tobacco products prescribed by the Regulations made under this Act commits an offence.

11. Testing and Reporting of the contents of tobacco products

- 1) Any person who manufactures or imports tobacco products in Kiribati who does not comply with all requirements relating to the testing and reporting of the additives and constituents in tobacco products sold in Kiribati, and the emissions in the smoke from the burning of tobacco products sold in Kiribati, prescribed by the Regulations made under this Act, commits an offence.
- 2) The Regulations made in relation to subsection (1) may prescribe any or all of the following:
 - a) which constituents and emissions must be tested for;
 - b) the classes of tobacco products that must be tested;
 - c) the frequency of testing;
 - d) the methods to be used in the testing of tobacco products;
 - e) the extent to which additives added to tobacco products during manufacturing must be reported on;
 - f) the tobacco products additives that must be reported upon;
 - g) the format of reports on test on tobacco products, or of reports on additives added to tobacco, and the frequency of those reports to be made to the Minister of Health;
 - h) the laboratory at which any test are to be undertaken, at the cost of the manufacturer or importer.

PART V – RESTRICTIONS ON THE SALE OF TOBACCO PRODUCTS

12. Prohibition on supplying tobacco to persons under 18 years

- 1) Any person who -
 - a) sells or supplies any tobacco product to a person under the age of 18 years; or
 - b) purchases a tobacco product for the use of a person under the age of 18 years,commits an offence and is liable upon conviction to a fine not exceeding \$1000.
- 2) It is a defence to a prosecution under subsection (1) if a person proves that he -
 - a) had reasonable cause to believe that the person purchasing the tobacco product, or for whom the tobacco product was purchased, or to whom the tobacco product was supplied, was not under the age of 18 years; or
 - b) had taken all reasonable precautions to ensure that the tobacco product was not sold to a person under the age of 18 years.
- 3) Any person under the age of 18 years who:
 - a) obtained, or attempts to obtain, any tobacco product from any retailer;
 - b) has in his possession, or consumes any tobacco product in any public place;commits an offence and shall be liable to a fine not exceeding \$500.

13. Minimum package size

- 1) Any person who imports for sale any package of cigarettes that holds fewer than those prescribed in the Regulations made under this Act, commits an offence.
- 2) Any person who sells cigarettes in a package other than the one in which they have been imported or been prescribed in the Regulations made under this Act, commits an offence.
- 3) Any tobacco products to which subsections (1) and (2) do not apply and that have been prepared for retail sale in Kiribati, may be sold in whatever quantity or weight prescribed in the Regulations made under this Act.

- 4) A person who contravenes the requirement under subsection (3) commits an offence and shall be liable to a fine not exceeding \$50 for the first offence and \$300 for the second and subsequent offences.

14. Vending machines

Any person who sells any tobacco product through vending machines in a manner other than those prescribed in the Regulations made under this Act, commits an offence.

15. Requirement to post signs

- 1) Every retailer of tobacco products shall post signs in the prescribed form and manner stating that it is illegal to sell or supply any tobacco product to persons under the age of 18 years.
- 2) Every retailer of tobacco products shall post signs in the prescribed form and manner concerning the health hazards and health effects arising from the use of the tobacco products or from their emissions and other health-related messages.
- 3) Any retailer of tobacco products who contravenes this section commits an offence and is liable upon conviction to a fine of not exceeding \$1000.

PART VI – RESTRICTIONS ON THE USE OF TOBACCO PRODUCTS

16. Prohibition on smoking in certain public places

- 1) Any person who smokes, except in any designated smoking area, in any -
 - a) amusement centre, theatre or sports stand at any time when such a person is open to the public;
 - b) hospital or clinic;
 - c) school (including school grounds) during school hours;
 - d) public transportation at any time when it is carrying fare-paying passengers;
 - e) building prescribed under section 18;
 - f) office;
 - g) workplace; or
 - h) any public toilets;

commits an offence and is liable upon conviction to a fine of not exceeding \$500.

- 2) The occupier and any person in charge of any place referred to in subsection (1) may identify a designated smoking area for use for smoking for employees working in that place provided that:
 - a) the designated smoking area where smoking is permitted is outside any building or enclosed workplace;
 - b) a person is not required to undertake his usual work duties in that designated area or in close proximity to that area; and
 - c) the smoke from the designated area does not adversely affect any indoor or enclosed place.
- 3) No area shall be designated as a designated smoking area on any form of public transportation by road.
- 4) The occupier and any person in charge of any place referred to in subsection (1) shall ensure that –
 - a) no person smokes except in a designated smoking area; and
 - b) 'no smoking' sign in both the I-Kiribati and English languages are clearly displayed in that place and at the entrance to that place.
- 5) Any person who contravenes subsection (4) commits an offence and is liable upon conviction to a fine not exceeding \$1000.

17. Smoke-free zones in licensed premises and restaurants until the expired date

- 1) The proprietor of every licensed premises or restaurant must designate not less than one half of the area of the licensed premises or restaurant available for use of the public as an area in which smoking is prohibited, to be known as smoke-free zone.
- 2) The proprietor and the person in charge of every licensed premises or restaurant shall ensure that a smoke-free zone is, so far as is reasonably practicable, separated from areas where smoking is permitted.
- 3) Any person who smokes in a smoke-free zone commits an offence and is liable upon conviction to a fine not exceeding \$500.

- 4) Any person who contravenes subsections (1) or (2) commits an offence and is liable upon conviction to a fine not exceeding \$1000.
- 5) Nothing in this section is to be taken as preventing the proprietor or person in charge of any licensed premises or restaurant from prohibiting smoking in all areas in the licensed premises or restaurant if he wishes.
- 6) This section shall expire on the date to be specified by regulation.

18. Other smoke-free places

Any building or class of buildings, or any part thereof, to which members of the public have access may, by the Regulations, be declared to be places in which smoking is prohibited, either permanently or for any period.

PART VII – ENFORCEMENT, INSPECTION, OFFENCES AND PUNISHMENTS

19. Authorized officers

- 1) All health inspectors of the Ministry of Health and all police officers shall be authorized officers for the purpose of this Act.
- 2) Any person or persons of a specified class or description may, by Gazette, be appointed as authorized officers for the purpose of this Act.
- 3) An authorized officer shall, upon request, provide identification that he is an authorized officer.

20. Powers of entry, search and seizure

- 1) For the purpose of this Act, an authorized officer may at all reasonable time –
 - a) enter any premises he knows or reasonably suspects –
 - i. are being used for the production, manufacture, assembly, preparation, storage or sale of any tobacco product or package; and
 - ii. have been or are being or are likely to be used by any person in connection with a contravention of any provision of this Act;

- b) enter any premises where he knows or reasonably suspects that records are kept relating to the sale, manufacture or promotion of tobacco products in contravention of any provision of this Act;
 - c) enter any premises which he knows or reasonably suspects are being used by any person for the printing, or as an office in connection with the printing, of any newspaper, or other publication or for the manufacture or distribution of any film, video recording or other electronic media which contravenes any provision of this Act;
 - d) enter any radio or television station which he knows or reasonably suspects is associated with any contravention of any provision of this Act;
 - e) in any premises entered by him –
 - i. search for, examine, take possession of or make copies of or extracts from records relating to any tobacco product, package or promotion supplied or to be supplied or relating to any matter the subject of an investigation under this Act;
 - ii. search for and examine goods found thereon;
 - iii. seize without payment any tobacco product or package;
 - iv. seize without payment any brochure, leaflets, books, writing, documents or other materials that he knows or reasonably suspects have been, are being, or are likely to be used to promote or package any tobacco product in contravention of any provision of this Act;
 - v. open any room, place, container or package that he knows or reasonably suspects contains any tobacco product or other item associated with any contravention of any provision of this Act;
 - vi. question with respect to matters under this Act any person he finds thereon;
 - f) make such inquiry and examination as he believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Act to ascertain whether any contravention of any provision of this Act has been, is being, or is likely to be committed.
- 2) Subsection (1) does not authorize forcible entry by an authorized officer to any premises except under the authority of a warrant obtained pursuant to subsection (3).
- 3) A magistrates may, if satisfied upon the information of an authorized officer that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of any provision of this Act for the keeping of records relating to a contravention of any provision of

this Act, issue a search warrant directing the authorized officer to enter the place specified in the search warrant for the purpose of exercising the powers conferred on an authorized officer under this Act.

- 4) For the purpose of gaining entry to any place, an authorized officer may call in aid from such persons as he considers necessary.
- 5) A search warrant issued under subsection (3) is, for a period of one month from its issue, sufficient authority –
 - a) to the authorized officer to whom it is directed, and to all persons acting in aid of the officer, to enter the place specified in the search warrant; and
 - b) to the authorized officer to whom it is directed to exercise in respect of the place specified in the search warrant all the powers conferred on an authorized officer by this Act.
- 6) If an authorized officer has taken possession of records or of other property for the purposes of this Act he may –
 - a) in the case of records, retain them for as long as necessary for those purposes but the person otherwise entitled to possession of the records, if he so request, is entitled to be furnished as soon as practicable with a copy certified by the authorized officer to be a true copy and such a certified copy must be received in all courts and elsewhere as evidence of the matters contained in it as if it were the original; and
 - b) in the case of other property subject to this Act, retain the property for as long as necessary for those purposes, and thereafter dispose of it as the court directs.

21. Obstruction

- 1) A person shall not obstruct an authorized officer in the exercise of his power under this Act or the Regulations made under this Act.
- 2) For the purpose of this Act, a person obstructs an authorized officer in the exercise of his power under this Act if he –
 - a) assaults, abuses, intimidates or insults the authorized officer or any other person assisting the authorized officer in the exercise of his powers under the Act;

- b) directly or indirectly prevents or attempts to prevent any person from being questioned by an authorized officer or from providing under this Act any information, records or copies; or
 - c) in any other way obstructs or attempts to obstruct an authorized officer in the exercise of his powers under this Act.
- 3) Any person who obstructs an authorized officer in the exercise of his powers under this Act or the Regulations made under this Act commits an offence and is liable upon conviction to a fine not exceeding \$1000.

22. Power to obtain information

- 1) Where an authorized officer has reasonable cause to suspect that any person has information or records in his possession that may be relevant to the operation or enforcement of this Act or to the investigation of a suspended contravention of any provision of this Act, he may require that person (either by oral or written requisition) to provide –
- a) any information, or
 - b) any records or a copy thereof,
- in the person's possession.
- 2) For the purpose of subsection (1), a person shall be taken to be in possession of–
- a) information, if the person has the information or is entitled to access to the information; or
 - b) records, if the person has them in his possession or under his control in any place, whether for his own use or benefit or for another's use or benefit and although another person has the actual possession or custody of the records.
- 3) A requisition made under subsection (1) may require that information or records or copy thereof be provided –
- a) to the authorized officer or another authorized officer or to an officer of a specified department of the Government;
 - b) at the place the requisition is made or at another place;
 - c) immediately, or at, by or within a time specified;
 - d) in person, or by email or in another specified manner;

- e) by means of, or accompanied by, verification in the form of an affidavit;
or
 - f) in the case of information, orally or in writing.
- 4) If a person records or stores any matter by means of a mechanical, electronic, or other device, the duty imposed by this section to produce any records containing those matters shall include a duty to produce the matters in written form if that is demanded.
- 5) Any person required to produce a copy of any records under this section shall produce a clear reproduction of the records.
- 6) An authorized officer may take notes or copies of or extract from records or a copy of any records produced under this section.
- 7) Any person who, without reasonable cause –
- a) fails to provide information, records or copies required under this section; or
 - b) provides or produces in response to a requisition under this section information, records or copies that is or are false or misleading in any material particular,
- commits an offence.

23. Directions may be issued to ensure compliance

- 1) If –
- a) any tobacco product, package, promotion, place referred to in section 16, licensed premises, restaurant, smoke-free building, smoke-free place or other place or thing does not comply with the provision of this Act or the Regulations made hereunder; or
 - b) any provision of this Act or the Regulations made hereunder has not been complied with,
- an authorized officer may, in writing, direct any person who has contravened the provision by such non-compliance to take, within a specified time not exceeding 14 days, such steps as may be specified to prevent any further contravention and to remedy the matters in respect of which the non-compliance has occurred.

- 2) The issue of a direction under subsection (1) does not affect any proceeding under this Act which has been or may be taken for the non-compliance.
- 3) A person who does not comply with a direction issued under subsection (1) commits an offence.

24. Prosecution

- 1) Prosecution for an offence under this Act may be brought –
 - a) by or on behalf of the Attorney-General;
 - b) by any police officer; or
 - c) by an authorized officer.
- 2) A person referred to in subsection (1) (b) or (c), whether or not a lawyer, may lay, institute or conduct any charge, information, complaint, or other proceeding arising under this Act, subject to any direction issued by the Attorney-General.

25. Magistrates' Court to have jurisdiction

Any Magistrates' court shall have jurisdiction to hear, try and determine any criminal proceeding arising in or from a charge made before such court that any person has committed, or is suspected of committing, within the jurisdiction of such court under this Act.

26. Penalties

A person who contravenes or fails to comply with any provision of this Act creating an offence is liable upon conviction, where there is no penalty provided, to a fine not exceeding –

- a) in the case of an individual, \$2000 for a first offence and \$5000 for a second offence or subsequent offences; and
- b) in the case of a body corporate, \$5000 for a first offence and \$10,000 for a second or subsequent offences.

27. Offences by bodies corporate

If a body corporate commits an offence against this Act, each director or other person concerned in the management of the body corporate is also guilty of, and liable to the penalty provided for that offence, unless the director or other person

proves that he exercised reasonable diligence to prevent the commission of the offence

28. Continuing offences

If a person commits an offence by failing to provide information or to produce records or a copy of any records required under section 22 -

- a) the obligation to provide the information or produce the records or copies, continues until the person complies with the requirement, notwithstanding that in a particular case a time was specified at, by or within which compliance was required and that time has passed;
- b) the person commits a continuing offence in respect of each day after the day of conviction during which the failure to comply with the requisition continues;
- c) the person is liable upon conviction to a fine not exceeding \$300 for each day during which the offence continues; and
- d) the person may be prosecuted from time to time in respect of the continuing offence under paragraph (b).

29. Additional powers of the court

- 1) If a person is convicted of an offence under section 3, the court, in addition to any other penalty, may order -
 - a) that the item used or displayed in connection with the commission of the offence be removed or obscured or confiscated and destroyed by an authorized officer; and
 - b) that the person convicted shall pay the reasonable costs incurred in removing or obscuring or confiscating and destroying any such item.
- 2) If a person is convicted of an offence under section 5, 6, 8 or 9, the court, in addition to any other penalty, may order -
 - a) that the tobacco product be confiscated and destroyed by an authorized officer, and
 - b) that the person convicted shall pay the reasonable costs incurred in confiscating and destroying the tobacco product.
- 3) Costs payable under subsection (1) or (2) may be recovered in the same way as a fine.

PART VIII – MISCELLANEOUS

30. Contracts, etc., void

- 1) A contract, agreement, undertaking or understanding that is tobacco related that is in effect when this Act comes into force is void to the extent which it is inconsistent with this Act.
- 2) Neither the Republic nor any person is liable to pay any damages or other compensation to any other person in consequence of subsection (1).

31. Regulations

The Minister, acting in accordance with the advice of the Cabinet, may make regulations prescribing –

- a) the size, content, color, style, position, number and nature of notice permitted at retail outlets where tobacco products are sold or offered for sale as described in section 3(5)(a);
- b) the manner by which tobacco products may or may not be stored or displayed for sale in retail outlets;
- c) the content and format of health messages and other information described in section 6 and 8 that must appear on packages, including the position of the information on packages and the size, color, style, content and nature of these messages and information;
- d) what information may not appear on packages containing tobacco products;
- e) what words and terms are considered misleading for the purposes of section 9;
- f) control on the content of tobacco products, or the setting of maxima or minima for identified constituents or additives in the tobacco product or compounds in the smoke of burned tobacco;
- g) all the measures and requirements listed under section 11(2);
- h) the content and format of notices that must be displayed by retailers under section 15;
- i) any building or class of building or any part thereof to which members of the public have access, in which smoking is prohibited and the conditions under which this prohibition applies; and
- j) any other matter necessary or convenient for carrying out or giving effect to the Act.

TOBACCO CONTROL ACT 2012
EXPLANATORY MEMORANDUM

According to the World Health Organization (WHO) tobacco kills almost five million people each year. If current trends continue, it is projected to kill 10 million people a year by 2020, with 70% of those deaths occurring in developing countries. The scientific evidence unequivocally establishes that tobacco smoke causes diseases, disability and death to those exposed, both smokers and non-smokers. Tobacco also takes an enormous toll in health care costs, lost productivity and of course the intangible costs of the pain and suffering inflicted upon smokers, passive smokers and their families. Tobacco smoke has harmful effects on children's health, exacerbating asthma, bronchitis, pneumonia, middle ear infection and chronic respiratory problems.

Most smokers start smoking at a very young age, when they are unaware of the extent and nature of the harm caused by tobacco products. Because of the addictive properties of nicotine they are often unable to quit even when they are highly motivated to do so. In addition, the marketing of tobacco products through product design, promotion, packaging, pricing and distribution, is known to contribute to the demand for tobacco products.

Studies conducted by the Ministry of Health and Medical Services show that more than 50% of adults in Kiribati are smokers. This is a serious problem requiring prompt actions. The purpose of this law then is to reduce tobacco use and its consequent harm by –

- Protecting children and other non-smokers from inducements to use tobacco;
- Protecting non-smokers from exposure to tobacco smoke;
- Ensuring that the population is adequately informed about the risks of tobacco use; and
- Promoting a climate where non-smoking and the absence of tobacco is the norm.

The WHO Framework Convention on Tobacco Control (FCTC), a multilateral treaty to which Kiribati is a party, sets minimum requirements for tobacco control legislation. This Bill provides a vehicle for ensuring compliance with certain requirements in that Convention.

The Act is divided into eight parts.

Part I deals with preliminary matters, including definitions.

Part II prohibits all promotions of tobacco products. Any form of advertising or promotion of tobacco products is now banned (s.3), as is the provision of free samples (s.4). Studies conducted internationally have shown that the extent of tobacco promotion influences the use of tobacco products both in the general population and in specific target groups, such as the youth. A comprehensive ban on the promotion of tobacco is necessary to have the greatest impact.

Part III imposes requirements concerning the packaging and labeling of tobacco products (s.5) and the health messages that must appear on that packaging (s.6). Requirements are also introduced to require information on tobacco constituents to be displayed on packaging (s.8) as well as providing that the use of certain words and images on packages may be prohibited (s.9). The capacity to identify certain countries' tobacco labeling requirements as an acceptable standard for Kiribati and to thus allow their import with existing health messages is also provided for (s.7). This display of conspicuous health warnings on tobacco packaging is a valuable vehicle for health promotion messages. Maximum publicity is given to the adverse health effects of smoking on smokers and those around them. Because smokers will see the information several times a day, the use of packaging for the communication of health warnings is an extremely cost-effective means of conveying to smokers information concerning the harmful effects of tobacco use. The requirements imposed by Part III are consistent with those that are in place in countries that export tobacco products to Kiribati and with other countries in the Pacific.

Part IV provides for regulation making powers for the future setting of maximum levels of chemicals in tobacco products and tobacco smoke (s.10) and for the testing and reporting of the contents of tobacco products (s.11). Work is underway via the Conference of the Parties to the WHO to develop guidelines on both these areas, for future implementation.

Part V introduces various initiatives intended to restrict the sale and use of tobacco products. Section 12 bans the sales of tobacco products to persons under the age of 18 years. Section 13 allows for regulations to prohibit the sale of individual cigarettes or small packages of cigarettes. However, provision is retained for small domestic repackaging of loose tobacco for sale. Cigarette vending machines are prohibited (s.14). These steps are aimed at restricting the availability and affordability of cigarettes for young people. Retailers are obliged to post health warning notices and signs informing the public of the ban on the sale of tobacco to young people (s.15).

Part VI contains probably the most far-reaching provisions of this legislation - the prohibition on smoking in various public places. Locations such as hospitals, schools, airports and offices will now be smoke-free under section 16, although areas may be designated for smoking by employees of these locations provided those areas are outside and smoking is able to be undertaken in a manner that does not affect others. Public transport will be smoke-free without exception. Anyone smoking in any of the listed public places can be fined up to \$500. Those in charge of public places who allow smoking other than in designated smoking areas face fines of up to \$1000. In addition to these measures, s.17 requires proprietors of licensed premises and restaurants to set aside at least half of their premises as smoke-free zones. This is a temporary measure, with the Bill providing that all restaurants and bars must be entirely smoke-free by a date provided under the Regulation. Under s.18 other buildings to which members of the public have access can be declared to be smoke-free places. Exposure to second hand smoke has been shown to be extremely harmful, with increased risk of heart disease, cancer and stroke demonstrated by various studies. The only effective strategy for protecting people from the health effects of tobacco smoke is a complete ban and a legislative approach is particularly warranted given the need to protect workers in their workplaces from proven hazards.

Part VII deals with enforcement, inspection, offences and punishments. Section 19 provides for the appointment of authorized officers competent to enforce the Act. Police officers and health inspectors are deemed to be authorized officers. Sections 20 to 23 make provisions for the powers required by authorized officers for effective implementation of the Act. Offences, penalties and the conduct of prosecutions are covered by ss.24 to 29.

Part VIII deals with miscellaneous matters. In particular, s.31 gives the Minister (acting in accordance with the advice of the Cabinet) the power to make regulations for the effective implementation of the Act.

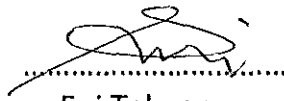
Titabu Tabane

Attorney-General

October 2012

CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression of the Tobacco Act 2013 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 22nd April 2013 and is found by me to be a true and correctly printed copy of the said Bill.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 17th day of May 2013.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu