

SMOKING AND TOBACCO PRODUCTS USAGE (CONTROL) ACT, 2005

ACT NO. 11 OF 2005

An Act for framing laws to regulate the production, usage, sale-purchase and advertisement of smoking and tobacco products

WHEREAS smoking and usage of tobacco products are injurious to public health;

WHEREAS to discourage smoking and usage of tobacco products Bangladesh has signed the Framework Convention on Tobacco Control (FCTC) on 16 June 2003 and ratified the same on 10 May 2004 in the 56th Conference of World Health Organisation; and

WHEREAS for the purpose of implementing the rules of the said Convention in Bangladesh it is expedient and necessary to control smoking and production, usage, sale-purchase and advertisement of tobacco products.

It is therefore enacted as follows:-

1. SHORT TITLE AND COMMENCEMENT

- (1) This Act shall be called Smoking and Tobacco Products Usage (Control) Act, 2005.
- (2) The Act shall come into force on such date as the Government may, by notification in the official Gazette, determine:

Provided that for the purpose of implementing different provisions of the Act, different dates may be fixed.

2. DEFINITIONS

In this Act, unless there is anything repugnant to the subject or context -

- (a) “Authorised Officer” means Upazilla Nirbahi Officer or Upazilla Health Officer or any equivalent or superior officer of Directorate of Health and shall include any or all officers empowered by different laws to carry out the concerned duties;
- (b) “Tobacco” means any *Nicotima Tobacum* or *Nicotima Bustica* plant or any other related plant or its leaf or crop;
- (c) “Tobacco Products” means any product made from tobacco which can be inhaled through smoking and shall include bidi, cigarette, cheroot, cigar and mixtures used in pipe;

- (d) “Smoking” means inhaling and exhaling the smoke of any tobacco product and shall include the holding of or controlling any ignited tobacco product;
- (e) “Smoking Area” means any area designated for smoking in a public place or a public transport;
- (f) “Public Place” means educational institution, Government, semi-Government and autonomous office, library, lift, hospital and clinic building, Court building, airport building, seaport building, riverport building, railway station building, bus terminal building, ferry, cinema hall, covered exhibition centre, theatre hall, shopping centre, public toilet, Government administered or private children park and any or all other places as may be declared by the Government, by notification in the Official Gazette;
- (g) “Public Transport” means motor car, bus, train, tram, ship, launch, all kinds of mechanized public transport, aircraft and any other transport determined or declared by the Government by notification in the Official Gazette;
- (h) “Rules” means rules framed under this Act;
- (i) “Person” means and includes company, society or organization or body of persons, whether incorporated or not.

3. APPLICATION OF OTHER LAWS

The provisions of this Act, unless there is anything contrary therein, shall be deemed to be additional to and not derogatory to the Railways Act, 1890 (Act IX of 1890), the Juvenile Smoking Act, 1919 (Ben. Act II of 1919), the Dhaka Metropolitan Police Ordinance, 1976 (Ord. No. III of 1976), the Chittagong Metropolitan Police Ordinance, 1978 (Ord. No. XLVIII of 1978), the Khulna Metropolitan Police Ordinance 1985 (Ord. No. LII of 1985) and Rajshahi Metropolitan Police Act, 1992 (Act No. XXIII of 1992) and all other existing laws.

4. PROHIBITION OF SMOKING IN PUBLIC PLACE AND PUBLIC TRANSPORT

- (1) Subject to the provision of section 7, no person shall smoke in any public place and public transport.
- (2) If any person contravenes the provision of sub-section (1), he shall be punishable with fine not exceeding fifty taka.

5. PROHIBITION ON ADVERTISEMENT OF TOBACCO PRODUCTS

- (1) No person shall -
 - (a) broadcast, display through photograph, make audible or cause to be heard advertisement of tobacco products in any cinema hall, governmental or private radio and television channel;
 - (b) sell or cause to be sold any film or videotape or any other thing containing advertisement of tobacco products;
 - (c) print or publish or cause to be printed or published advertisement of tobacco products in any book, magazine, leaflet, handbill, billboard, newspaper or printed paper published in Bangladesh; and
 - (d) distribute or supply any leaflet, handbill or document to the public which carries the brand name, colour, logo, trademark, mark, sign or advertisement of tobacco products.

Explanation - In this section, advertisement means dissemination in any kind of print and electronic media, e-mail, internet, telecast or in any other medium by written, printed or mentioned words.

- (2) Nothing in clause (d) of sub-section (1) shall apply to any shopkeeper or businessman who sells tobacco products.
- (3) No person shall, for the purpose of encouraging or enticing the sale of tobacco products, give or propose to give any free sample of the said product to the public.
- (4) No person shall, for the purpose of promoting the usage of tobacco products, give or accept any gift, prize, scholarship or enter into any agreement or understanding with any other person to arrange any tournament.
- (5) If any person contravenes the provisions of this section he shall be punishable with imprisonment for a term not exceeding three months or with fine which may extend to one thousand taka or both.

6. PROHIBITION ON INSTALLATION OF AUTOMATIC VENDING MACHINE

- (1) No person shall install or give permission to install or keep or give permission to keep any automatic vending machine in public footpath, public place or public transport for sale of tobacco products.

- (2) If any person contravenes the provision of sub-section (1), he shall be punishable with fine not exceeding one thousand taka.

Explanation - In this section, “Automatic Vending Machine” means such automatic machine in which by inserting any coin, metal or any other product, normally or with the assistance of the purchaser tobacco or tobacco products are served.

7. ARRANGEMENT OF SMOKING AREA

- (1) The owner, caretaker or controlling person or manager of a public place and the owner, caretaker or controlling person or manager of a public transport may mark or designate a smoking area therein.
- (2) The boundary, description, equipment and security arrangements of the smoking area in a public place or a public vehicle shall be prescribed by Rules.

8. DISPLAY OF CAUTION NOTICE

Outside the area marked or designated as a smoking area under section 7, the owner, caretaker or controlling person or manager of every public place shall in one or more places in the said area and the owner, caretaker or controlling person or manager of a public transports shall in the concerned transport arrange to display a notice “**Refrain from Smoking, It is a Punishable Offence**” in Bengali and in English language.

9. POWER OF AUTHORISED OFFICER

- (1) In order to implement the provisions of this Act, the Authorised Officer shall be entitled to enter and visit any public place or public transport within their own jurisdiction.
- (2) The Authorised Officer shall be empowered to expel from any public place or public transport any person who contravenes the provisions of this Act.
- (3) If any person sells or offers to sell any tobacco product in breach of the provisions of this Act, the Authorised Officer shall be empowered to use, transfer, destroy or seize such tobacco products in the manner prescribed by Rules.
- (4) Within 7 days of taking any measure under sub-section (3), the Authorised Officer shall notify about it in writing to the Government.

10. HEALTH RELATED WARNINGS ETC. ON THE BODY OF PACKETS

- (1) Every establishment producing tobacco products shall, on the packet or cover of tobacco products, print in capital letters and in clearly visible and large size (at least 30% of the total area) any of the following warnings i.e.
 - (a) Smoking causes death;
 - (b) Smoking causes stroke;
 - (c) Smoking causes heart disease;
 - (d) Smoking causes lung cancer;
 - (e) Smoking causes respiratory problems; or
 - (f) Smoking is injurious to health.
- (2) No person shall be entitled to purchase or sell any packet or wrapper of tobacco products where the provision of sub-section (1) has not been followed.
- (3) Any person breaching the provisions of sub-sections (1) or (2) shall be punishable with imprisonment for a term not exceeding three months or fine which may extend to one thousand taka or both.

11. DISCLOSURE OF INFORMATION ABOUT INGREDIENTS IN IMPORTING TOBACCO PRODUCTS

- (1) At the time of importing tobacco products, the concerned importer shall submit a report to the Government mentioning the quantity of each ingredient used in the said tobacco product.
- (2) If any person imports tobacco products without submitting the report under sub-section (1), the said products may be confiscated at any time.

12. GRANTING OF LOAN FOR PRODUCTION OF ALTERNATIVE CROPS TO TOBACCO PRODUCTS

- (1) To discourage tobacco farmers from producing tobacco products and to encourage them to produce alternative cash crops the Government shall provide loan on simple terms and the facility shall continue for the next five (5) years from the coming into force of this Act.
- (2) For motivating in gradually discouraging the production and use of tobacco products and for the purpose of discouraging the establishment tobacco products industry, the Government will formulate necessary policy.

13. PUBLIC SERVANT

The Authorised Officer, while performing his duties under this Act, shall be deemed to be a Public Servant in the same manner as the word Public Servant has been used in section 21 of the Penal Code, 1860 (Act XLV of 1860).

14. OFFENCES TO BE COGNIZABLE AND BAILABLE

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), all offences under this Act shall be -

- (a) Cognizable and Bailable;
- (b) Triable by Magistrates of any Class.

(2) No Court shall take cognizance of any offence under this Act without the complaint in writing of an Authorised Officer.

15. OFFENCES BY COMPANIES

If the person committing offence under this Act is a company, then the owner, director, manager, secretary or any other officer or agent of the said company shall be deemed to have committed the said offence, unless he can prove that the offence was committed without his knowledge or he has tried his best to restrain commission of the offence.

Explanation - In this section -

- (a) “Company” means any statutory body, commercial establishment, partnership firm, society or organization;
- (b) In case of commercial establishment, “Director” shall mean any partner or member of Board of Directors.

16. POWER TO MAKE RULES

The Government may, by notification in the official Gazette, make Rules to carry out the purposes of this Act.

17. ORIGINAL TEXT AND ENGLISH TEXT

The original text of this Act shall be in Bengali and there shall be an Authentic English text of the Act;

Provided that, in the event of conflict between the Bengali text and the English text, the Bengali text shall prevail.

18. REPEALS AND SAVINGS

- (1) After the commencement of this Act -
 - (a) The East Bengal Prohibition of Smoking in Show Houses Act, 1952 (E.B. Act XIII of 1952); and
 - (b) The Tobacco Products Sale (Control) Act, 1988 (Act No. 45 of 1988) shall stand repealed.
- (2) Notwithstanding such repeal, any case pending under the repealed Acts or any other proceeding continuing shall continue as if this Act had not been passed.