

Bill of Legislation

amending the Tobacco Control Act, No. 6/2002, and Act No. 86/2011, on Trade in Alcohol and Tobacco, as subsequently amended (smokeless tobacco, youths etc.)

(Submitted to the 141st legislative session of the Althingi, 2012-2013)

CHAPTER I

Amendments to the Tobacco Control Act, No. 6/2002, as subsequently amended

Art. 1

A new paragraph shall be added following the second paragraph of Art. 1, which shall read as follows:
Efforts shall be made to combat tobacco use by youths and to limit the supply of tobacco products specially intended to attract youths.

Art. 2

The following changes shall be made to Art. 8 of the Act:

- a. The words “with the exception of chewing tobacco” in the fifth paragraph shall be replaced by: including chewing tobacco. The following shall also be added to this paragraph: Provision shall be made in a Regulation for the permitted grain size of smokeless tobacco, the party competent to carry out measurements and testing of tobacco for the purpose of assessing whether it may be placed on the market in Iceland, and the implementation of measurements to this end. If it is not possible to measure or carry out suitable testing of the tobacco, the tobacco product shall not be permitted in Iceland. Producers and importers of tobacco shall bear the cost of measurements and testing to this end.
- b. A new paragraph shall be added following the fifth paragraph of Art. 8 of the Act, which shall read as follows: The importation, manufacture and sale of tobacco products especially directed at youths with regard to their flavourings or scents, appearance, size or shape of packaging, name and marketing, or presentation in other respects is prohibited.
- c. The reference “under paragraphs 8 and 9” in the tenth paragraph, which will become the eleventh paragraph, shall be replaced by: “provided for in the ninth and tenth paragraphs”.

Art. 3

Following the words “primary/lower secondary schools” in the second paragraph of Art. 10 shall be added the words: upper secondary schools, special schools.

CHAPTER II

Amendments to Act No. 86/2011, on Trade in Alcohol and Tobacco, as subsequently amended

Art. 4

The heading of Art. 11 of the Act shall read as follows: *Alcohol product selection*

Art. 5

A new Art. 11 a shall be added after Art. 11, which together with its heading shall read as follows:

Tobacco product selection

The Minister shall issue a Regulation on the product selection, procurement and manufacture of tobacco by ÁTVR.

ÁTVR may reject tobacco products especially directed at youths with regard to their flavourings or scents, appearance, size or shape of packaging, name and marketing or presentation in other respects.

ÁTVR may reject products containing manipulative or subjective information or which suggest that tobacco enhances physical, mental, social or sexual function, are offensive, or otherwise violate public morality, e.g. with reference to violence, religion, illegal drugs, political views, discrimination or criminal conduct.

ÁTVR shall endeavour to ensure its procurement complies with international conventions.

ÁTVR may reject a product which closely resembles another product on the market.

ÁTVR may reject a product containing caffeine or other stimulants.

Art. 6

This Act shall enter into force on 1 January 2013.

Explanatory Notes on this Bill of Legislation

This Bill was drafted in the Ministry of Welfare, following consultation with the Ministry of Finance and Economic Affairs, the Directorate of Health and the State Alcohol and Tobacco Company (ÁTVR). In the light of experience in other countries, i.e. the increased use of smokeless tobacco and the increased consumption by youths of Icelandic snuff as oral tobacco, it is deemed necessary to legislate restrictions on further marketing and product development of smokeless tobacco.

According to the Tobacco Control Act, No. 6/2002, the importation, manufacture and sale of fine-grained snuff and all oral tobacco is prohibited, with the exception of chewing tobacco, cf. the fifth paragraph of Art. 8 of the Act. Oral tobacco is defined as all products made entirely or partly from tobacco, for oral use, except those intended for smoking. Snuff is defined as powder or grains made entirely or partly from tobacco, for nasal use. Chewing tobacco is oral tobacco in pieces or strips, mainly intended for chewing. According to Directive 2001/37/EC of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products, oral tobacco is prohibited, i.e. all tobacco intended for oral use apart from smoking tobacco and chewing tobacco. This Directive is part of the EEA Agreement and is transposed into Icelandic law with the provisions of the Tobacco Control Act, together with Regulations based on this same Act. From this it can be concluded that snuff is allowed according to EU legislation, and Iceland has gone further with its prohibition against fine-grained snuff. It should be pointed out that Sweden has been given a special exemption from the EU prohibition against oral tobacco in its Accession Treaty and the same exemption is granted to Norway in the EEA Agreement.

In recent quarters ÁTVR has resisted the importation of smokeless tobacco due to suspicion that this was not permissible snuff but rather oral tobacco. ÁTVR has informed the Ministry of Welfare that, if no changes are made, all importation will be authorised as of the end of this year. This Bill is intended to set up a certain line of defence to prevent products which have not been sold by ÁTVR or have not been on the Icelandic market, from being placed on sale in Iceland. The objective of these amendments is to protect youths from additional tobacco use.

The ultimate objective of the Bill is therefore to reduce consumption of smokeless tobacco and the damage to health caused by such consumption, as research has shown that consumption of smokeless tobacco can lead to various illnesses. Mention can be made in this connection that smokeless tobacco contains substances which can cause cancer, primarily of the oral cavity, the oesophagus and the pancreas. The consumption of smokeless tobacco, especially oral tobacco, can also cause various periodontal diseases, loss of teeth and gingival recession, while sweeteners mixed with tobacco can cause dental cavities. Consumption of smokeless tobacco can also cause premature birth and pre-eclampsia and studies have shown a potential link between smokeless tobacco and diabetes, metabolic disorders and cardiovascular disease. The consumption of smokeless tobacco is addictive, just as consumption of smoking tobacco, and smokeless tobacco also contains nicotine which is easily absorbed through the mucous membrane of the nose and mouth. Nicotine is a type of neurotoxin which can cause toxic symptoms such as nausea and respiratory difficulties, which can lead to respiratory arrest and consequent death.

In recent years the frequency of smoking has decreased, while at the same time the use of oral tobacco among youths has increased. In other respects it is inappropriate to compare the use of oral tobacco with smoking, because there are few things as hazardous as smoking. It is therefore more appropriate to compare the consumption of oral tobacco with abstinence from its use. It could also be mentioned that marketing by tobacco

manufacturers regarding the use of smokeless tobacco in areas where smoking is prohibited generally weakens the policy of governments throughout the world to reduce tobacco consumption.

In recent years there has been considerable public discussion of the increased use of oral tobacco by young males and the use of Icelandic snuff as tobacco for oral use. A summary in the statistical publication *Talnahbrunnur* from the Directorate of Health of June 2012 (Vol. 6, Issue 5) states as follows: "Monitoring the frequency of smoking confirms a decline in Iceland among both genders, as 14.2% smoke daily according to the most recent surveys. The frequency is currently slightly lower among women than men, but random fluctuations can affect the figures of individual surveys. Daily smoking is most common among young people aged 18-34 years, ranging from 19-22%. In this age group, smoking is more common among males, and reaches 22% in the 25-34-year age group. Among young males, the frequency of oral tobacco use is also high: 15% of those 18-24 years use snuff daily and 13% in the age group 25-34 years. In view of the higher frequency of smoking in this age group, the frequency of using snuff is a cause for concern, as total tobacco consumption by young males becomes much higher by comparison than total consumption among females. The findings of the survey also show that it is fairly common for young males to both smoke and use snuff. Based on conclusions on the quantity of tobacco use and developments in the sale of snuff, it can be estimated that around 70-80% of ÁTVR's production of snuff is taken orally." This survey by the Directorate of Health suggests strongly that snuff has in fact become oral tobacco, and thereby illegal according to the Tobacco Control Act. The results also suggest that it is no longer possible to distinguish between oral tobacco and snuff.

The principal substance of the Bill is the ban on the importation, manufacture and sale of tobacco products especially directed at youths with regard to their flavourings or scents, appearance, size or shape of packaging, name and marketing or presentation in other respects. In addition, the Bill proposes to tighten the provisions on the objectives of the Tobacco Control Act, eliminate the exemption for chewing tobacco, make more detailed provision for measurements and testing of tobacco and rectify Art. 10 of the Act to prohibit all tobacco consumption in upper secondary schools and special schools. Furthermore, the Bill proposes to add provisions on tobacco product selection to the Act on Trade in Alcohol and Tobacco, which are similar to the current provisions of that Act on alcohol product selection. It is proposed that ÁTVR be given authorisation to reject certain tobacco products so that it will be possible to enforce effectively the government's emphases in tobacco matters.

It should be pointed out that the intention is to have a public policy for tobacco control prepared under the auspices of the Ministry of Welfare and the Directorate of Health. Among other things, it will emphasise the substantial provisions of the WHO Framework Convention on Tobacco Control of 2004 and increased information disclosure on the contents of tobacco. The latter point has been given increased emphasis in discussion of tobacco control in recent quarters, as according to the eighth paragraph of Art. 8 of the Tobacco Control Act, health authorities can demand that tobacco manufacturers or importers provide information on the contents of the product, see also Art. 13 of Regulation No. 790/2011, on the picture and text warnings on tobacco and measurements of the maximum harmful substances, and Art. 10 of the Framework Convention.

This Bill goes beyond Directive 2007/37/EC, which prohibits all oral tobacco except chewing tobacco and does not set any restrictions on the use of snuff as is proposed in subparagraph b of Art. 2. These measures are intended to ensure public health in Iceland and prevent youths from taking up the use of smokeless tobacco. It could also be pointed out that, according to information from ÁTVR, chewing tobacco has not been imported or manufactured in Iceland during the past seven years, although it has been authorised under Icelandic law to import, manufacture and sell chewing tobacco. As a result this Bill must be presented in the European Economic Area as provided for in Act No. 57/2000, on the Exchange of Information on Technical Regulations on Goods and Distance Marketing of Services.

As explained above, this comprises an amendment to the Tobacco Control Act to restrict further spread of the use of smokeless tobacco in Iceland, with the principal objective of combating tobacco consumption among youths and the damage to health arising from such consumption. The Bill is not expected to have a significant impact on state administration or Treasury expense and revenues, since it sets restrictions on the importation and manufacture of tobacco products which have only been available to a very limited extent on the Icelandic market.

Notes on individual Articles of the Bill

On Art. 1

The provision would add to the objectives of the Tobacco Control Act a paragraph stating that efforts shall be made to combat use of tobacco by youths and to limit the supply of tobacco products specifically intended to attract them. The provision is intended especially to underline the importance of combating all undesirable use of tobacco by youths.

On Art. 2

Here three types of changes are proposed to Art. 8 of the Tobacco Control Act. Subparagraph a proposes that the exemption in the fifth paragraph of Art. 8 of the Act, authorising the importation, manufacture and sale of chewing tobacco, be repealed and chewing tobacco prohibited along with other oral tobacco. This is in fact to ensure that the use of chewing tobacco does not begin to spread once more in Iceland, as the State Alcohol and Tobacco Company (ÁTVR) has not offered such tobacco for sale in recent years.

It is also proposed that a Regulation prescribe the permitted grain size of smokeless tobacco, the party competent to carry out measurements and testing of tobacco for the purpose of assessing whether it may be placed on the market in Iceland, and the implementation of measurements in other respects. If it does not prove possible to measure or carry out proper tests on the tobacco, e.g. if it needs to be dried prior to measuring, the tobacco product shall not be permitted on the Icelandic market. Producers and importers of tobacco shall pay for measurements and testing to this end. Despite provisions in the ninth paragraph of Art. 8 on the obligation of manufacturers and importers of tobacco to provide samples of products or carry out the tests required to assess their characteristics and effects, it is considered necessary to provide more clearly for the tests which conceivably need to be carried out on smokeless tobacco in particular. Specifically, it is necessary to prevent tobacco intended for oral use to be permitted on the market in Iceland under the guise of permissible snuff, as referred to in the fifth paragraph of Art. 8. It is therefore necessary to state specifically that if it does not prove possible to test the tobacco in a satisfactory manner, it may not be placed on the market in Iceland.

To prevent increased use of smokeless tobacco and especially new recruitment of smokeless tobacco users, subparagraph b of Art. 2 proposes to prohibit the import, manufacture and sale of tobacco products especially directed at youths with regard to their flavourings or scents, appearance, size or shape of packaging, name and marketing or presentation in other respects. Tobacco manufacturers place increasing emphasis on marketing smokeless tobacco for youths, e.g. with flavourings and scents different from those used in traditional tobacco manufacturing and packaging designed to be attractive in the eyes of youths. Such smokeless tobacco has not been available in Iceland up until now and therefore it is natural to prevent marketing of such products especially aimed at youths and young people. Furthermore, it is important to prevent those products already on the market from being developed in this direction.

Subparagraph c makes appropriate changes to the tenth paragraph of Art. 8 as a result of the paragraph which was added.

On Art. 3

This proposes to amend the second paragraph of Art. 10 of the Tobacco Control Act so that all tobacco consumption other than smoking will also be prohibited in special schools and upper secondary schools. According to the first paragraph of Art. 10, smoking is prohibited in upper secondary schools and special schools, but the opposite inference from the second paragraph is that other tobacco consumption is allowed in these two locations. The provision is intended to harmonise the second paragraph with the first paragraph of Art. 10 of the Act.

On Art. 4

The provision amends the heading of Art. 11 of the Act on Trade in Alcohol and Tobacco, making it clear that the provision applies to alcohol product selection.

On Art. 5

This proposes to add a new Article, Art. 11 a, on tobacco product selection, to the Act on Trade in Alcohol and Tobacco, corresponding to the provision on alcohol product selection, cf. Art. 11 of the Act. The provisions of the first paragraph and the third to sixth paragraphs are based on provisions on alcohol product selection.

The provision of the second paragraph is based on subparagraph b of Art. 2 of the Bill and the Opinion of the majority of the Health Committee on the Bill of Legislation amending the Tobacco Control Act, No. 6/2002, as subsequently amended, of the 139th session of the Althingi, see Parl. Doc. 1561, Item 579. Reference could also be made to a Private Members' Bill amending the Act on Trade in Alcohol and Tobacco, No. 86/2011, as subsequently amended (tobacco), which was presented by Álfheiður Ingadóttir at the 140th session, cf. Parl. Doc. 1188, Item 750.

It is necessary to adopt provisions authorising ÁTVR to reject tobacco products covered by subparagraph b of Art. 2 of the Bill in order to make the prohibition on the import, manufacture and sale of tobacco products which are directed especially at young people effective. This is a comparable assessment as is currently carried out by ÁTVR in connection with selection rules for alcohol products. In addition, it is important that ÁTVR be authorised by law to reject products on the basis of those perspectives listed in the provision in order to enforce effectively the government's emphases in tobacco matters.

On Art. 6

The provision requires no explanation.