

Smoke-free Environments (Controls and Enforcement) Amendment Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Smoke-free Environments (Controls and Enforcement) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to amend the Smoke-free Environments Act 1990 to prohibit retail displays of tobacco products, increase controls on tobacco, and facilitate the enforcement of tobacco controls. It aims to gradually reduce tobacco uptake, particularly among young people, and to help smokers to quit.

Herbal smoking products

The Act defines a herbal smoking product as a product that is, or contains, vegetable matter and is intended to be smoked; but contains no tobacco. Under the Act it is an offence to sell herbal smoking products to a person who is younger than 18 years old. Section 39(1)(e) of

the Act confers the power to make regulations to require that health warnings be displayed on herbal smoking products, but no such regulations have been made.

We recommend amending the bill to ensure that the provisions affecting herbal smoking products carry through to the new regime. This change would mean that

- retailers of herbal smoking products, including those who operate on the Internet, would be required to display specific health information or warnings
- selling herbal smoking products over the Internet to customers younger than 18 years old would be prohibited
- retailers selling herbal smoking products over the Internet would be required to follow any regulations relating to the display of information about the prohibition on selling to people younger than 18 years old
- retailers, including those who operate over the Internet, who failed to display the required health information or warnings relating to herbal smoking products would be committing an offence and liable to be fined up to \$2,000
- retailers who sold herbal smoking products to people or to a person with the intention that they be supplied to people younger than 18 would be committing an offence, and liable to be fined up to \$2,000
- retailers offering herbal smoking products for sale over the Internet without displaying specific information or warnings about the legal purchasing age would be committing an offence and liable to be fined up to \$2,000.

Using herbal smoking products is harmful to health because it involves the inhalation of burning organic matter. We consider that there is little or no evidence that herbal smoking products are a useful aid to smoking cessation, particularly compared with other smoking cessation aids. We note that herbal smoking products may implicitly normalise smoking, and that users may progress to smoking tobacco. We heard submissions suggesting that the new display, advertising, and sponsorship provisions should also extend to herbal smoking products. We think this extension has merit but should not be done until the affected parties have had an opportunity to make

submissions on it. We encourage the Government to consider further amending legislation in the future.

Commencement and transition dates

We recommend amending clause 2(1) to change the date on which the legislation would come into force. As introduced, the provisions relating to the prohibition of product displays would come into force six months after the bill received the Royal assent. Our proposed amendment would extend this delay to 12 months.

We recommend amending new section 23B (inserted by clause 7), which relates to the power to make temporary transitional regulations for particular classes of business for up to two years following the commencement date. We recommend that this exemption period be decreased to 12 months, so that all businesses would be compliant with the product display prohibition after 24 months. This amendment is reflected in the proposed change to the purpose of Part 1.

We consider that these amendments would give sellers (retailers and wholesalers) enough time to make the necessary changes to comply with the bill. The longer lead-in time would also allow time for regulations to be made governing

- which retailers and wholesalers would be exempt for the additional 12 months, and which transitional arrangements would apply to them
- the product lists, price notices, health messages, and age prohibition information or warnings permitted or required to be displayed or distributed by sellers
- acceptable forms of visible delivery of tobacco products to a seller before a sale, or by a seller to a purchaser after a sale.

The amendments would minimise the relative advantage enjoyed by the businesses with temporary exemption from the prohibition.

Internet sales

We recommend a number of amendments to ensure that sales controls would also cover Internet sales of tobacco and herbal smoking products. These amendments include those to new sections 41AA(c), 41AA(ca), and the addition of proposed new sections 22(3)(b) and 23(3) (inserted by clause 7), proposed new section

29AAB (inserted by clause 9), proposed new sections 30(1) and 30(6A) (inserted by clause 10), proposed new sections 36(5AAB) and 36(7AAA) (inserted by clause 12), and proposed new sections 39(1)(ida) and 39(1)(iea) (inserted by clause 14). These amendments are also reflected in proposed amendments to the purpose of Part 1. Section 30(1) bans sales of tobacco products or herbal smoking products to a person younger than 18 years. To reinforce that sales ban, we recommend clause 10 amend section 30(1) so that it also bans sellers of these products from delivering them, or arranging their delivery, to people younger than 18 years. Clauses 17 and 18 make related changes to enforcement officers' powers.

Covert sponsorship

We recommend replacement wording for the existing provision controlling sponsorship (proposed new section 25, inserted by clause 7A), and the addition of a new prohibition against covert sponsorship (proposed new section 25A, inserted by clause 7A). We understand that tobacco companies have been buying exclusive supply rights to events around New Zealand. The exclusive availability of a single tobacco brand at an event enhances the brand's marketing power. The tobacco companies also employ people to work at such events wearing the brand's colours. The Māori Affairs Committee recommended in its report on the *Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori* that the Act be amended to stop tobacco companies from engaging in such covert sponsorship arrangements.¹ Proposed new sections 25 and 25A would ban sponsorship activity using the trade mark of tobacco products, and prohibit sponsorship involving exclusive supply rights for tobacco products. Consequential amendments to clause 12 of the bill would amend section 36 of the Act to make it an offence to breach the ban on covert sponsorship, and maintain or set penalty fines of up to \$50,000 for a manufacturer, importer, or distributor, and up to \$10,000 for anyone else, who breaches the ban.

¹ Māori Affairs Committee, *Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori*, I.10A, p. 6.

Penalties

We recommend several amendments relating to the penalties regime in the bill. These amendments would raise the maximum fine amounts a court could impose on an employee or business that breached the bill, and detail an expanded infringement notice scheme. It includes infringement notices imposing fines that could be issued instantly by enforcement officers.

Increased fines

We recommend the insertion of new section 36(6) to increase the penalties for selling tobacco products to a minor. An employee would be liable for a fine of no more than \$5,000, while a body corporate would be fined up to \$10,000. The Māori Affairs Committee's report recommends that the penalty for selling tobacco to minors be raised to a maximum of at least \$10,000.² We agree that the maximum penalty under the Act for selling tobacco products to people under the age of 18 is too low at \$2,000, especially since the average penalty imposed by the courts is just \$300.

We understand that the majority of smokers who are under the legal age purchase tobacco products from commercial sources; and that youth smokers are especially vulnerable to the effects of nicotine. Increasing the penalty for this offence would signal its severity, and the seriousness with which it is regarded.

The proposed new section distinguishes between fines imposed upon employees and upon businesses. We understand that most of the prosecutions for selling tobacco to people under the age of 18 are against individual employees rather than businesses, as in many cases the business owner produces evidence of having advised sales staff of the law against selling tobacco to minors. We consider that the differential penalty regime should encourage business owners to ensure that illegal sales do not take place on their premises. It would also bring this aspect of New Zealand's legislation into line with other jurisdictions.

² Ibid, p. 6.

Infringement notice scheme

We propose amendments to new sections 38A, 38B, 38C, and 38D that would extend the infringement notice scheme regarding the sale of tobacco products to people under the age of 18 to additional offences, consistent with the bill's aims of improving enforcement.

Our proposed amendments to new sections 38A, 38B, 38C, and 38D would extend the infringement scheme to cover existing offences. We also recommend extending the scheme so that infringement notices could be issued for offences created by our proposed amendments: failure to display the required health warning signs at the point-of-sale; offering tobacco products for sale over the Internet without providing the required health information; and selling tobacco and herbal smoking products over the Internet without displaying the required purchase age information or warnings. We also propose amendments to increase some of the maximum infringement notice penalties.

Regulation-making powers

Clause 14 of the bill as introduced relates to regulation-making powers, including powers to make regulations prescribing requirements for the display of notices and signs about health information, providing for temporary transitional exemptions from the product display ban, and prescribing infringement notice fees. We recommend that the Act's requirement that the Minister of Health consults with tobacco-sellers and companies before making regulations relating to sales and controls on tobacco be repealed. We were assured that normal consultation with these individuals and groups would still occur. Our proposed amendments to clause 14 repeal sections 39(4) and 39(5) of the Act and provide regulation-making powers to prescribe the following:

- acceptable forms of visible delivery of tobacco products to a seller or by a seller to a purchaser
- the content of price notices, signage, health warnings, and purchase age information required for sale on the Internet
- where signs are required, where they are permitted, and where they are prohibited

- requirements for different classes of people who sell tobacco products or herbal smoking products, for different types of business, points-of-sale, and product.

Appendix

Committee process

The Smoke-free Environments (Controls and Enforcement) Amendment Bill was referred to the committee on 9 December 2010. The closing date for submissions was 28 January 2011. We received and considered 150 submissions from interested groups and individuals and heard evidence from 51 of them. We held hearings in Wellington and Auckland. We received advice from the Ministry of Health.

Committee membership

Dr Paul Hutchison (Chairperson)

Dr Jackie Blue

Hon Ruth Dyson (until 9 February 2011)

Kris Faafoi (from 9 February 2011)

Kevin Hague

Iain Lees-Galloway

Hon Damien O'Connor (from 13 October 2010 until 9 February 2011)

Grant Robertson (from 9 February 2011)

Eric Roy

Nicky Wagner

Michael Woodhouse

**Smoke-free Environments (Controls and
Enforcement) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Tariana Turia

**Smoke-free Environments
(Controls and Enforcement)
Amendment Bill**

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Smoke-free Environments (Controls and Enforcement) Amendment Act **2010**.

2 Commencement

(1) **Sections 5 to 7, 7A, 9, 10(3), 12(1) to (4) and (6), 13(2), 14(1) to (3) and (5), and 15** (which contain amendments relating to promotion and advertising, display of tobacco products, ~~and sponsorship,~~ sales-outlet signs and notices, and Internet-sales information or warnings) come into force at the end of the period of ~~6~~ 12 months that starts on the day after the date on which this Act receives the Royal assent. 5 10

(2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

3 Principal Act amended

This Act amends the Smoke-free Environments Act 1990. 15

Part 1
Amendments relating to
controls on tobacco products

Purpose of Part

- 4 Purpose of this Part** 5
- The purpose of this Part is to amend the principal Act so that it—
- (a) generally prohibits the display of tobacco products in or at the ~~exterior~~ outside of retail and other sales outlets, but also provides for temporary transitional exemptions from compliance during a ~~2-year~~ 12-month transition period: 10
 - (b) prohibits the display, on the ~~exterior~~ outside of retail premises, of retailers' names or trading names that are or include words, phrases, trade marks, or company names that have the effect of advertising the availability of tobacco products: 15
 - (c) treats sales-outlet notices or signs and Internet-sales messages that are or include tobacco product health or purchase age information or warnings as prohibited advertisements unless those sales-outlet notices or signs or Internet-sales messages are ones that it requires or permits: 20
 - (ca) requires people who offer tobacco products or herbal smoking products for Internet sale to make visible on their Internet sites health and purchase age information or warnings: 25
 - (cb) prohibits (more fully, or for the first time) manufacturers, importers, distributors, and retailers of tobacco products from sponsoring activities involving the use of tobacco product trade marks: 30
 - (cc) prohibits manufacturers, importers, distributors, and retailers of tobacco products from sponsoring activities involving exclusive supply arrangements: 35
 - (d) facilitates the enforcement of prohibitions on distribution or supply of tobacco products free of charge or at a reduced charge, or with rewards, by providing that a term of an arrangement has no effect if compliance

with the term would prevent or limit compliance with those prohibitions:

- (e) is adjusted by related amendments and repeals.

Preliminary and general provisions

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| <u>4A</u> | <u>Title repealed</u> The Title is repealed. | 5 |
| <u>4B</u> | <u>Heading to section 1, etc, amended</u> | |
| (1) | <u>The heading to section 1 is amended by omitting “Short”.</u> | |
| (2) | <u>Section 1(1) is amended by omitting “may be cited as” and substituting “is”.</u> | 10 |
| <u>5</u> | <u>Interpretation</u> | |
| (1) | <u>Section 2(1) is consequentially amended by repealing the definitions of children’s product, face, pouch pack, tobacconist’s shop, and tobacco packages in a visible stack.</u> | |
| (2) | <u>Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:</u> | 15 |
| | <u>“Internet sale, in relation to a tobacco product or herbal smoking product, means a sale (whether by retail or wholesale) of the product pursuant to a contract that—</u> | |
| | <u>“(a) has been entered into using the Internet between—</u> | 20 |
| | <u> “(i) a seller whose business is or includes offering the product for sale (whether by retail or wholesale);</u> | |
| | <u> and</u> | |
| | <u> “(ii) a person (whether the purchaser or a person acting on the purchaser’s behalf) who is at a distance</u> | 25 |
| | <u> from the seller’s place of business; and</u> | |
| | <u>“(b) contains a term providing for the product to be delivered by or on behalf of the seller to, or to a place or person chosen by, the purchaser”.</u> | |
| <u>5A</u> | <u>New section 3A inserted</u> The following section is inserted after section 3: | 30 |
| | <u>“3A Purposes of this Act</u> | |
| | <u>“(1) The purposes of this Act are, in general, as follows:</u> | |

- “(a) to reduce the exposure of people who do not themselves smoke to any detrimental effect on their health caused by smoking by others; and
 - “(b) to regulate and control the marketing, advertising, and promotion of tobacco products, whether directly or through the sponsoring of other products, services, or events; and 5
 - “(c) to monitor and regulate the presence of harmful constituents in tobacco products and tobacco smoke; and
 - “(d) to establish a Health Sponsorship Council. 10
- “(2) **Subsection (1)** does not limit or affect the particular purposes, stated in sections 4 and 21, of Parts 1 and 2.”

Promotion and advertising, and display of tobacco products

- 6 Advertising of tobacco products** 15
- Section 22 is amended by inserting the following subsections after subsection (1):
- “(1A) A notice or sign is a tobacco product advertisement if the notice or sign—
 - “(a) communicates information that is or includes tobacco product health information or warnings, tobacco product purchase age information or warnings, or both; and
 - “(b) is displayed inside or at the exterior of the place of business of a person who offers tobacco products for sale (whether by retail or wholesale); and 25
 - “(c) is not required or permitted by this Act, regulations under this Act, or both.
- “(1B) **Subsection (1A)** does not limit the generality of subsection (1).”

- 7 New sections 22 to 23B substituted** 30
- Sections 22 to 23B are repealed and the following sections substituted:
- “**22 Advertising of tobacco products**
 - “(1) No person may, unless authorised by **section 22A or 23**, publish in New Zealand, or arrange for any other person to publish 35

in New Zealand, a tobacco product advertisement (as defined in section 2(1)).

“(2) A notice or sign must be treated as a tobacco product advertisement if the notice or sign—

“(a) communicates information that is or includes tobacco product health information or warnings, tobacco product purchase age information or warnings, or both; and 5

“(b) is displayed inside or at the outside of the place of business of a person who offers tobacco products for sale (whether by retail or wholesale); and 10

“(c) is not required or permitted by this Act, regulations under this Act, or both.

“(3) A message must be treated as a tobacco product advertisement if the message—

“(a) communicates information that is or includes tobacco product health information or warnings, tobacco product purchase age information or warnings, or both; and 15

“(b) is an Internet-sales message; and

“(c) is not required or permitted by this Act, regulations under this Act, or both. 20

“(4) **Subsections (2) and (3)** do not limit the generality of **subsection (1)** or of the definition in section 2(1) of the term tobacco product advertisement.

“22A Exemptions from advertising prohibition for specified publications 25

Nothing in **section 22(1)** applies to any of the following:

“(a) any price list given to retailers of tobacco products if the price list includes the health messages required by or under this Part:

“(b) any advertisement included in any book, magazine, or newspaper printed outside New Zealand, or in any radio or television transmission originating outside New Zealand, or in any film or video recording made outside New Zealand, unless— 30

“(i) the main purpose of the book, magazine, newspaper, transmission, film, or video recording is the promotion of the use of tobacco products; or 35

- “(ii) the book, magazine, newspaper, film, or video recording is intended for sale, distribution, or exhibition primarily in New Zealand; or
- “(iii) in the case of an advertisement in any radio or television transmission, the advertisement is targeted primarily at a New Zealand audience: 5
- “(c) the publication by a tobacco products manufacturer of a tobacco product advertisement in a magazine that is intended for distribution only to employees of the manufacturer: 10
- “(d) the exhibition, in any museum or art gallery, of any work or artifact:
- “(e) the dissemination, broadcasting, or exhibition of any film, video recording, or sound recording, where—
- “(i) that film, video recording, or sound recording was made before 16 December 1990; and 15
- “(ii) the tobacco product advertisement included in that film, video recording, or sound recording is in the form of a reference to, or a depiction of, a tobacco product trade mark that is only an incidental part of that film, video recording, or sound recording. 20
- “23 **Exemptions from advertising prohibition for retailers and vending machines, and Internet sellers**
- “(1) A retailer of tobacco products may ~~(notwithstanding section 22)~~ do either or both all or any of the following things: 25
- “(a) display inside that retailer’s place of business provide, inside that retailer’s place of business, and on a request (however expressed) made for the purpose by a person who has asked to purchase a specified, or any available, tobacco product, any notice for the public information (in any medium, but only in the form of printed, written, or spoken words) that— 30
- “(i) does no more than identify the tobacco products that are available for purchase in that place and indicate their price; and 35
- “(ii) complies with any regulations for the time being in force under **section 39(1)(ia)**:

- “(ab) display inside that retailer’s place of business any notice for the public that—
- “(i) does no more than indicate, using only printed or written words, the fact that, and the location or locations where, tobacco products in general are available for purchase in that place; and 5
- “(ii) complies with any regulations for the time being in force under **section 39(1)(iaa)**;
- “(b) display the retailer’s name or trade name at the exterior outside of the retailer’s place of business so long as the name is not and does not include either or both of the following: 10
- “(i) any word or expression signifying that any tobacco product is available in that place for purchase: 15
- “(ii) the trade mark of a tobacco product or the company name of a tobacco products manufacturer.
- “(2) Any person who offers any tobacco products for sale (whether by retail or wholesale) by way of an automatic vending machine may (notwithstanding **section 22**) display, on the exterior or outside of the vending machine, any notice for the public that— 20
- “(a) does no more than identify (using only printed or written words) the tobacco products and indicate (using only printed or written words) its their prices; and 25
- “(b) complies with any regulations for the time being in force under **section 39(1)(ib)**.
- “(3) Any person who offers any tobacco product for Internet sale (whether by retail or wholesale) may, on a request (however expressed) made for the purpose by another person who has asked to purchase a specified, or any available, tobacco product, allow to be visible on the person’s Internet site when people browse, enter, or otherwise access it information that is only in the form of printed or written words, and that— 30
- “(a) does no more than identify the tobacco product and indicate its price; and 35
- “(b) complies with any regulations for the time being in force under **section 39(1)(iba)**.

“23A Display of tobacco products in or from sales outlets or vending machines generally prohibited

- “(1) A person who offers tobacco products for sale (whether by retail or wholesale) must not allow any part of a tobacco product, tobacco package, or tobacco carton at the ~~exterior~~ outside of or inside the person’s place of business to be for any reason visible—
- “(a) from outside the place; or
 - “(b) from an area inside the place to which members of the public are allowed access.
- “(2) A person who offers any tobacco product for sale (whether by retail or wholesale) by way of an automatic vending machine must not allow any part of a tobacco product, tobacco package, or tobacco carton to be for any reason visible from outside the machine.
- “(3) **Subsection (1)** does not limit or affect, and is not limited or affected by, **subsection (2)**.
- “(4) **Subsections (1) and (2)** do not, however, apply to a tobacco product, tobacco package, or tobacco carton that is visible only to the extent that is necessary for it to be delivered—
- “(a) to the person at the place or, as the case requires, to the machine; or
 - “(b) to its purchaser at or from the place or, as the case requires, from the machine.
- “(4A) A tobacco product, tobacco package, or tobacco carton must be treated as being visible only to the extent that is authorised by **subsection (4)(a) or (b)** if it is delivered—
- “(a) to a person and at or from a place or machine specified in that paragraph; and
 - “(b) using a form of visible delivery prescribed by any relevant acceptable forms of visible delivery regulations for the time being in force under **section 39(1)(ibb)**.
- “(5) **Subsections (1) and (2)** do not, however, apply to a tobacco product, tobacco package, or tobacco carton that is visible in a way that complies with any relevant temporary transitional exemption regulations for the time being in force under **section 39(1)(ic)**.

- “**23B** **Transitional exemption regulations expire 2 years 12 months after section 23A comes into force**
- “(1) The following enactments expire at the end of the ~~2-year~~ 12-month transition period:
- “(a) **sections 23A(5) and 39(1)(ic) and (6A)**; and 5
- “(b) all regulations under **section 39(1)(ic)** that are in force immediately before the end of that period.
- “(2) The ~~2-year~~ 12-month transition period ends ~~on the 2nd anniversary of~~ at the close of the period of 12 months that starts on the day on which **section 23A** (as substituted by **section 7** 10 of the **Smoke-free Environments (Controls and Enforcement) Amendment Act 2010**) comes into force.
- “(3) On their expiry those enactments are repealed or, as the case requires, revoked.”
- Sponsoring activity involving use of trade mark, etc, of tobacco products* 15
- 7A** **New sections 25 and 25A substituted**
Section 25 is repealed and the following sections are substituted:
- “**25** **Sponsoring activity involving use of trade mark, etc, of tobacco products** 20
- “(1) No person who is a manufacturer, importer, distributor, or retailer of tobacco products may sponsor (within the meaning of **subsection (2)** an organised activity that is to take place, is taking place, or has taken place, in whole or in part, in 25 New Zealand, and that involves the use, in the name of that activity, or on or through any thing other than a tobacco product, of all or any of the following:
- “(a) a tobacco product trade mark:
- “(b) all or any part of a company name included in a tobacco product trade mark: 30
- “(c) 1 or more words, logos, colours, shapes, sounds, smells, or other elements of a tobacco product trade mark that, as those 1 or more elements are used in the name, or on or through the thing, are likely to cause a person 35 exposed to the name or thing to believe that the 1 or

more elements are used in, on, or through it only or mainly for the purpose of advertising the product.

“(2) A person sponsors an activity for the purposes of **subsection (1)** or **section 25A(1)** if, and only if, the person does all or any of the following:

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“(a) organises or promotes, before the activity is to take place, or during the time that it takes place, some or all of the activity:

“(b) makes, before the activity is to take place, or during or after the time that it takes place, any financial or non-financial contribution towards some or all of the activity:

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“(c) makes, before the activity is to take place, or during or after the time that it takes place, any financial or non-financial contribution to any other person in respect of the organisation or promotion, by that other person, of, or the participation, by that other person, in, some or all of the activity.

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“25A Sponsoring activity involving exclusive supply arrangement

“(1) No person who is a manufacturer, importer, distributor, or retailer of tobacco products may sponsor (within the meaning of **section 25(2)**) an organised activity that is to take place, is taking place, or has taken place, in whole or in part, in New Zealand, and that involves an arrangement for the person to be the only person supplying tobacco products at, or for the purposes of, some or all of the event.

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“(2) The arrangement may be a contract, or a legally binding or other agreement, undertaking, or understanding.

“(3) **Subsection (2)** does not limit **subsection (1)**.

“(4) This section operates in parallel with (that is, is not subject to, and does not override) the Commerce Act 1986.”

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Arrangements conflicting with Act have no effect

8 New section 28A inserted

The following section is inserted after section 28:

“28A Arrangements conflicting with Act have no effect

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“(1) A term has no effect if—

- “(a) it is expressed or implied in an arrangement of any kind in any form; and
- “(b) compliance with it would limit or prevent compliance with section 28(1) or (2).
- “(2) The arrangement may be a contract, or a legally binding or other agreement, undertaking, or understanding. 5
- “(3) **Subsection (2)** does not limit **subsection (1)**.
- “(4) A person who is, or is claiming through or under, a party to the arrangement may (regardless of whether it is a contract) seek relief under the Illegal Contracts Act 1970 (which applies 10 with the necessary modifications) as if compliance with the term were performance, in a way that gives rise to illegality, of a provision of a contract.”

Sales-outlet signs and notices, and Internet-sales information or warnings 15

9 New sections 29AA and 29AAB inserted

The following sections ~~is~~ are inserted before section 29A:

“29AA Point-of-sale ~~tobacco product~~ health information or warnings signs

Every person who offers a tobacco product or herbal smoking product for sale (by retail or wholesale) a ~~tobacco product~~ must, at all times when point-of-sale health information or warnings signs regulations under **section 39(1)(id)** that apply to the person are in force, display clearly at each point of sale at the ~~exterior~~ outside of or inside the person’s place of business a sign for the public that— 20

- “(a) does no more than communicate ~~tobacco product~~ health information or warnings (which may, without limitation, be or include the message ‘SMOKING KILLS Ka mate koe i te kai hikareti’); and 30
- “(b) complies with any regulations for the time being in force under **section 39(1)(id)**.

“29AAB Internet-sales health information or warnings

“(1) Every person who offers a tobacco product or herbal smoking product for Internet sale (by retail or wholesale) must, at all times when Internet-sales health information or warnings 35

regulations under **section 39(1)(ida)** that apply to the person are in force, comply with all provisions of those regulations (if any) requiring health information or warnings to be visible on the person’s Internet site when people browse, enter, or otherwise access it.

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“(2) The health information or warnings to be visible—

“(a) may, without limitation, be or include the message ‘SMOKING KILLS Ka mate koe i te kai hikareti’; and

“(b) must comply with any regulations for the time being in force under **section 39(1)(ida)**.”

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10 Sale of tobacco products and herbal smoking products to people under 18 prohibited

(1) The heading to section 30 is amended by inserting “, and sellers’ arranging or effecting delivery,” after “Sale”.

(2) Section 30(1) is amended by inserting “, or having sold it to a person of any age deliver it or arrange for it to be delivered,” after “No person may sell a tobacco product or herbal smoking product”.

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(3) Section 30 is consequentially amended by repealing subsection (6) and substituting the following subsections:

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“(6) Every person who offers a tobacco product or herbal smoking product for sale by retail ~~a tobacco product or herbal smoking product~~ must, at all times when point-of-sale purchase age information or warnings regulations under **section 39(1)(ie)** that apply to the person are in force, display clearly at each point of sale at the ~~exterior~~ outside of or inside the person’s place of business a notice for the public that—

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“(a) does no more than communicate information or warnings to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited; and

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“(b) complies with any regulations for the time being in force under **section 39(1)(ie)**.

“(6A) Every person who offers a tobacco product or herbal smoking product for Internet sale (by retail or wholesale) must, at all times when Internet-sales purchase age information or warnings regulations under **section 39(1)(iea)** that apply to the

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person are in force, comply with all provisions of those regulations (if any) requiring purchase age information or warnings to be visible on the person’s Internet site when people browse, enter, or otherwise access it.

“(6B) The purchase age information or warnings required by **sub-section (6A)** to be visible must— 5

“(a) do no more than communicate information or warnings to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited; and 10

“(b) comply with any regulations for the time being in force under **section 39(1)(iea).**”

Part 2

Amendments relating to offences, regulations, and purposes 15

Purpose of Part

11 Purpose of this Part

The purpose of this Part is to amend the principal Act so that—

(a) it makes an infringement notice scheme available to enforce specified prohibitions, including the prohibitions on the sale of tobacco products and herbal smoking products to people under younger than 18 years: 20

(b) its provisions relating to offences, regulations, and amendments are adjusted in the light of the amendments made to it by this Act. 25

Offences

12 Offences in respect of smoking products

(1AA) The heading to section 36 is amended by omitting “**smoking products**” and substituting “**tobacco products and herbal smoking products.**” 30

(1) Section 36 is amended by repealing subsection (1A) and substituting the following subsection:

“(1A) A person who, without reasonable excuse, allows a tobacco product, tobacco package, or tobacco carton to be visible in

- contravention of **section 23A(1) or (2)** commits an offence and is liable to a fine not exceeding \$10,000.”
- (2) Section 36(3) is amended by omitting “section 25, organises or promotes any organised activity, or makes any financial contribution towards any organised activity, or makes any financial contribution to any other person in respect of the organisation or promotion, by that other person, of, or the participation, by that other person, in, any organised activity,” and substituting “**section 25(1)**, sponsors (within the meaning of **section 25(2)**) an organised activity”. 5 10
- (3) Section 36 is amended by inserting the following subsection after subsection (3):
- “(3A) Every manufacturer, importer, distributor, or retailer of tobacco products who, in contravention of **section 25A(1)**, sponsors (within the meaning of **section 25(2)**) any organised activity, commits an offence and is liable,— 15
- “(a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
- “(b) in any other case, to a fine not exceeding \$10,000.”
- (4) Section 36 is amended by inserting the following subsections after subsection (5): 20
- “(5AA) Every person who offers a tobacco product for sale (by retail or wholesale) and who fails, without reasonable excuse, to display any point-of-sale health information or warnings sign or signs required by **section 29AA** commits an offence and is 25
- liable to a fine not exceeding \$2,000.
- “(5AAB) Every person who offers a tobacco product for Internet sale (by retail or wholesale) and who fails, without reasonable excuse, to make visible in accordance with **section 29AAB** the health information or warnings required by 30
- section 29AAB** commits an offence and is liable to a fine not exceeding \$2,000.”
- (5) Section 36 is amended by repealing subsections (6) and (7) and substituting the following subsections:
- “(6) Every person who sells a tobacco product, or who having sold it delivers it or arranges for it to be delivered, in contravention of section 30(1) commits an offence and is liable,— 35

“(a) in the case of a person who is a body corporate, to a fine not exceeding \$10,000; and

“(b) in the case of a person who is not a body corporate, to a fine not exceeding \$5,000.

“(6A) Every person who sells a herbal smoking product, or who having sold it delivers it or arranges for it to be delivered, in contravention of section 30(1) commits an offence and is liable to a fine not exceeding \$2,000. 5

“(6B) Every person who supplies a tobacco product or herbal smoking product in a public place in contravention of section 30AA(1) commits an offence and is liable to a fine not exceeding \$2,000. 10

“(7) Every person who offers a tobacco product or herbal smoking product for sale by retail and who fails, without reasonable excuse, to display in accordance with **section 30(6)** the point-of-sale purchase age information sign or signs required by **section 30(6)** commits an offence and is liable to a fine not exceeding \$2,000. 15

“(7AAA) Every person who offers a tobacco product or herbal smoking product for Internet sale (by retail or wholesale) and who fails, without reasonable excuse, to make visible in accordance with **section 30(6A)** the purchase age information or warnings required by **section 30(6A)** commits an offence and is liable to a fine not exceeding \$2,000.” 20

Infringement offences 25

13 New sections 38A to 38D inserted

(1) The following sections are inserted after section 38:

“38A Infringement offences

In **sections 38A** ~~this section~~ and **sections 38B** to 39,—

“infringement fee, in relation to an infringement offence, means an amount ~~not exceeding \$400~~, prescribed for the purposes of this section in regulations made under **section 39(1)(if)**— 30

“(a) prescribed for the purposes of this section in regulations made under **section 39(1)(if)**; and 35

“(b) not exceeding the maximum infringement fee amount specified for that offence (in the relevant paragraph of the definition in this section of infringement offence)

“infringement offence means an offence against section 36(6)(a) (which relates to contravening section 30(1), which prohibits selling tobacco products and herbal smoking products to people younger than 18 years); that is an offence against a section, and that relates to contravening the section or sections, specified in any 1 of the following paragraphs (and that has the maximum infringement fee amount specified in that paragraph):

“(a) section 36(5), but only so far as it relates to contravening section 29(1) (on publishing an advertisement for a tobacco product that directly or indirectly states or suggests that the product is suitable for chewing or for any other oral use (other than smoking)) or section 29(2) (on importing for sale, selling, packing, or distributing a tobacco product labelled or otherwise described as suitable for chewing, or for any other oral use (other than smoking))—maximum infringement fee amount \$1,000:

“(b) section 36(5A) (which relates to contravening section 29A(2), which relates to distributing a tobacco product to which section 29A(1) applies, or supplying a tobacco product to which section 29A(1) applies to another person for later distribution, or, in the case of a retailer, supplying a tobacco product to which section 29A(1) applies to another person for the purpose of that retailer’s business)—maximum infringement fee amount \$1,000:

“(c) section 36(5B) (which relates to contravening section 29B, which relates to permitting an automatic vending machine that dispenses or is capable of dispensing tobacco products or herbal smoking products to be located in a place to which members of the public have access, and also to permitting a tobacco product or herbal smoking product to be sold by way of an automatic vending machine in a place to which members of the public have access)—maximum infringement fee amount \$400:

- “(d) **section 36(6)** (which relates to contravening section 30(1) by selling, or after selling them delivering or arranging for the delivery of, tobacco products to people younger than 18 years)—maximum infringement fee amount \$1,000: 5
- “(e) **section 36(6A)** (which relates to contravening section 30(1) by selling, or after selling them delivering or arranging for the delivery of, herbal smoking products to people younger than 18 years)—maximum infringement fee amount \$400: 10
- “(f) section 36(7A) (which relates to contravening section 30A(2) or (3), both of which impose restrictions on the sale of certain tobacco products in small quantities)—maximum infringement fee amount \$400:
- “(g) section 36A(2) (which relates to contravening section 36A(1), which prohibits sale of a toy tobacco product to a person younger than 18 years)—maximum infringement fee amount \$400. 15

“Compare: 1989 No 63 s 162A

“**38B Commission of infringement offences** 20

A person who is alleged to have committed an infringement offence may either—

- “(a) be proceeded against for the alleged offence by the laying of an information under the Summary Proceedings Act 1957; or 25
- “(b) be served with an infringement notice as provided for in **section 38C**.

“Compare: 1989 No 63 s 162B

“**38C Infringement notices**

- “(1) If an enforcement officer observes a person committing an infringement offence, or he or she has reasonable cause to believe that such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person. 30
- “(2) Any enforcement officer (not necessarily the person who issued the notice) may deliver the infringement notice (or a copy of it) to the person alleged to have committed an infringement 35

offence personally or by post addressed to that person's last known place of residence or business.

“(3) For the purposes of the Summary Proceedings Act 1957, an infringement notice (or a copy of it) sent to a person under **subsection (2)** is to be treated as having been served on that person when it was posted. 5

“(4) Every infringement notice must be in the prescribed form and must contain the following particulars:

“(a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and 10

“(b) the amount of the infringement fee; and

“(c) the address of the place at which the infringement fee may be paid; and

“(d) the time within which the infringement fee must be paid; and 15

“(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and

“(f) a statement that the person served with the notice has a right to request a hearing; and 20

“(g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and

“(h) any other particulars that may be prescribed.

“(5) If an infringement notice has been issued under this section, the procedure under section 21 of the Summary Proceedings Act 1957 may be used in respect of the offence to which the infringement notice relates; and, in that case, the provisions of that section apply with all necessary modifications. 25

“Compare: 1989 No 63 s 162C 30

“**38D Payment of infringement fees**

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account.

“Compare: 1989 No 63 s 162D”.

(2) Paragraphs (a) to (g) of the definition of infringement offence in section 38A (as inserted by subsection (1)) are repealed and the following paragraphs substituted: 35

- “(a) section 36(5), but only so far as it relates to contravening section 29(1) (on publishing an advertisement for a tobacco product that directly or indirectly states or suggests that the product is suitable for chewing or for any other oral use (other than smoking)) or section 29(2) (on importing for sale, selling, packing, or distributing a tobacco product labelled or otherwise described as suitable for chewing, or for any other oral use (other than smoking))—maximum infringement fee amount \$1,000: 5 10
- “(b) **section 36(5AA)** (which relates to contravening **section 29AA**, which in certain circumstances requires point-of-sale signs to be displayed by a person who offers for sale (by retail or wholesale) a tobacco product or herbal smoking product)—maximum infringement fee amount \$400: 15
- “(c) **section 36(5AAB)** (which relates to contravening **section 29AAB**, which in certain circumstances requires health information or warnings to be made visible by a person who offers for Internet sale (by retail or wholesale) a tobacco product)—maximum infringement fee amount \$400: 20
- “(d) section 36(5A) (which relates to contravening section 29A(2), which relates to distributing a tobacco product to which section 29A(1) applies, or supplying a tobacco product to which section 29A(1) applies to another person for later distribution, or, in the case of a retailer, supplying a tobacco product to which section 29A(1) applies to another person for the purpose of that retailer’s business)—maximum infringement fee amount \$1,000: 25 30
- “(e) section 36(5B) (which relates to contravening section 29B, which relates to permitting an automatic vending machine that dispenses or is capable of dispensing tobacco products or herbal smoking products to be located in a place to which members of the public have access, and also to permitting a tobacco product or herbal smoking product to be sold by way of an automatic vending machine in a place to which members of the public have access)—maximum infringement fee amount \$400: 35

- “(f) **section 36(6)** (which relates to contravening section 30(1) by selling, or after selling them delivering or arranging for the delivery of, tobacco products to people younger than 18 years)—maximum infringement fee amount \$1,000: 5
- “(g) **section 36(6A)** (which relates to contravening section 30(1) by selling, or after selling them delivering or arranging for the delivery of, herbal smoking products to people younger than 18 years)—maximum infringement fee amount \$400: 10
- “(h) **section 36(7)** (which relates to contravening **section 30(6)**, which in certain circumstances requires point-of-sale purchase age information or warnings to be displayed by a person who offers a tobacco product or herbal smoking product for sale by retail)—maximum infringement fee amount \$400: 15
- “(i) **section 36(7AAA)** (which relates to contravening **section 30(6A)**, which in certain circumstances requires purchase age information or warnings to be made visible by a person who offers a tobacco product or herbal smoking product for Internet sale (by retail or wholesale))—maximum infringement fee amount \$400: 20
- “(j) section 36(7A) (which relates to contravening section 30A(2) or (3), both of which impose restrictions on the sale of certain tobacco products in small quantities)—maximum infringement fee amount \$400: 25
- “(k) section 36A(2) (which relates to contravening section 36A(1), which prohibits sale of a toy tobacco product to a person younger than 18 years)—maximum infringement fee amount \$400.” 30

Regulations

14 Regulations

- (1) Section 39(1) is amended by repealing paragraph (c). 35
- (2) Section 39(1) is amended by repealing paragraph (ia) and substituting the following paragraphs:
- “(ia) prescribing for the purposes of **section 23(1)(a)(ii)** (on retailers) requirements with which a tobacco product

and price ~~notice~~ information under **section 23(1)(a)** must comply:

- “(iaa) prescribing for the purposes of **section 23(1)(ab)(ii)** (on retailers) requirements with which a tobacco product availability and locations notice under **section 23(1)(ab)** must comply: 5
- “(ib) prescribing for the purposes of **section 23(2)(b)** (on vending machines) requirements with which a tobacco product and price notice under **section 23(2)** must comply: 10
- “(iba) prescribing for the purposes of **section 23(3)(b)** (on Internet sales) requirements with which a tobacco product and price information under **section 23(3)** must comply:
- “(ibb) prescribing for the purposes of **section 23A(4A)(b)** acceptable forms of visible delivery of all or any of tobacco products, tobacco packages, and tobacco cartons: 15
- “(ic) prescribing for the purposes of **section 23A(5)** ways in which a class or classes of people who offer tobacco products for sale may allow a tobacco product, tobacco package, or tobacco carton to be visible: 20
- “(id) prescribing for the purposes of **section 29AA** requirements with which point-of-sale ~~tobacco product~~ health information or warning signs under that section must comply: 25
- “(ida) prescribing for the purposes of **section 29AAB** requirements that a person who offers a tobacco product for Internet sale (by retail or wholesale) make visible as required by **section 29AAB** health information or warnings, and prescribing requirements with which that information or those warnings must comply: 30
- “(ie) prescribing for the purposes of **section 30(6)(b)** requirements with which a notice for the public (to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited) under **section 30(6)** must comply: 35
- “(iea) prescribing for the purposes of **section 30(6A)** requirements that a person who offers a tobacco product or herbal smoking product for Internet sale (by retail or

- wholesale) make visible as required by **section 30(6A)** tobacco product and herbal smoking product purchase age information or warnings, and prescribing requirements with which that information or those warnings must comply.” 5
- (3) Section 39 is amended ~~consequentially~~—
- (a) by repealing subsections (3) to (5); and
- (b) by inserting “, **(ib), (ic), (id), or (ie)**” after “subsection (1)(ia)” in each place where it appears in subsections (4) and (5); and 10
- (c) by inserting “, **(ib), (id), (ida), (ie), or (iea)**” after “subsection (1)(ia)” in subsection (6).
- (4) Section 39(1) is amended by inserting the following paragraphs after paragraph (ia):
- “(if) prescribing for the purposes of **section 38A** the infringement fee or infringement fees payable in respect of different kinds of infringement offences: 15
- “(ig) prescribing for the purposes of (and for the purposes of the procedure in section 21 of the Summary Proceedings Act 1957 as modified and applied by) **section 38C** the form of infringement notices and reminder notices for infringement offences, and any other particulars to be contained in infringement notices and reminder notices.” 20
- (5) Section 39 is amended by inserting the following subsections after subsection (6): 25
- “(6AA) Regulations under all or any of **subsection (1)(ia), (iaa), (ib), (id), (ida), (ie), and (iea)** may (without limitation) prescribe different requirements for all or any of the following:
- “(a) different classes of people who offer tobacco products or herbal smoking products for sale: 30
- “(b) different classes of place of business:
- “(c) different classes of points of sale:
- “(d) different circumstances of the sales for which requirements are prescribed. 35
- “(6AAB) Regulations under **subsection (1)(ibb)** may (without limitation) do either or both of the following:

- “(a) prescribe for different classes of people who offer tobacco products for sale different acceptable forms of visible delivery of all or any of tobacco products, tobacco packages, and tobacco cartons:
- “(b) prescribe conditions with which 1 or more classes of people of that kind must comply before, or while, using a prescribed acceptable form of visible delivery. 5
- “(6A) Regulations under **subsection (1)(ic)** may (without limitation) do either or both of the following:
- “(a) prescribe for different classes of people who offer tobacco products for sale different ways of allowing a tobacco product, tobacco package, or tobacco carton to be visible: 10
- “(b) prescribe conditions with which 1 or more classes of people of that kind must comply before, or while, allowing a tobacco product, tobacco package, or tobacco carton to be visible in a way prescribed. 15
- “(6B) Regulations under **subsection (1)(id)** may (without limitation) prescribe requirements relating to all or any of the following matters relating to signs under **section 29AA:** 20
- “(a) the health information or warnings to be communicated by them:
- “(b) the shape and lengths of their sides:
- “(c) the width, and other aspects of, the borders around their edges: 25
- “(d) the typeface or font, point size, other aspects of the format or layout, or of the clarity, legibility, and weight, of the printing on them of the health information or warnings to be communicated by them:
- “(e) the minimum area that they must have for printing across: 30
- “(f) any official attribution (which may, without limitation, be or include ‘Ministry of Health Warning’) that they are to contain, and the way in which that attribution is to be communicated by them. 35
- “(6C) Regulations under **subsection (1)(ida)** may (without limitation) prescribe requirements relating to all or any of the following matters relating to the health information or warnings to be made visible under **section 29AAB:**

- “(a) the shape, and lengths of, the sides of that information or those warnings:
- “(b) the width, and other aspects of, the borders around the edges of that information or those warnings:
- “(c) the typeface or font, point size, other aspects of the format or layout, or of the clarity, legibility, and weight, of all or any of the text of that information or those warnings: 5
- “(d) the minimum area of that information or those warnings: 10
- “(e) any official attribution (which may, without limitation, be or include ‘Ministry of Health Warning’) that that information is, or that those warnings are, to contain.”

15 Smoke-free Environments Regulations 2007 amended 15
Regulations 30 and 31 of the Smoke-free Environments Regulations 2007 are consequentially revoked.

Purposes of Amendment Act

- 16 New section 41AA inserted**
- The following section is inserted after section 41:
- “41AA Purposes of Smoke-free Environments (Controls and Enforcement) Amendment Act 2010** 20
- “(1) The purpose of **Part 1** of the **Smoke-free Environments (Controls and Enforcement) Amendment Act 2010** is to amend this Act so that it—
- “(a) generally prohibits the display of tobacco products in or at the ~~exterior~~ outside of retail and other sales outlets, but also provides for temporary transitional exemptions from compliance during a ~~2-year~~ 12-month transition period: 25
 - “(b) prohibits the display, on the ~~exterior~~ outside of retail premises, of retailers’ names or trading names that are or include words, phrases, trade marks, or company names that have the effect of advertising the availability of tobacco products: 30
 - “(c) treats sales-outlet notices or signs and Internet-sales messages that are or include tobacco product health or 35

- purchase age information or warnings as prohibited advertisements unless those sales-outlet notices or signs or Internet-sales messages are ones that it requires or permits:
- “(ca) requires people who offer tobacco products or herbal smoking products for Internet sale to make visible on their Internet sites health and purchase age information or warnings: 5
 - “(cb) prohibits (more fully, or for the first time) manufacturers, importers, distributors, and retailers of tobacco products from sponsoring activities involving the use of tobacco product trade marks: 10
 - “(cc) prohibits manufacturers, importers, distributors, and retailers of tobacco products from sponsoring activities involving exclusive supply arrangements: 15
 - “(d) facilitates the enforcement of prohibitions on distribution or supply of tobacco products free of charge or at a reduced charge, or with rewards, by providing that a term of an arrangement has no effect if compliance with the term would prevent or limit compliance with those prohibitions: 20
 - “(e) is adjusted by related amendments and repeals.
- “(2) The purpose of **Part 2** of the **Smoke-free Environments (Controls and Enforcement) Amendment Act 2010** is to amend this Act so that— 25
- “(a) it makes an infringement notice scheme available to enforce specified prohibitions, including the prohibitions on the sale of tobacco products and herbal smoking products to people ~~under~~ younger than 18 years:
 - “(b) its provisions relating to offences, regulations, and amendments are adjusted in the light of the amendments made to it by that Amendment Act.” 30

*Related amendments to
enforcement officers' powers*

- 17 **Requirement to give identifying information** 35
- (1) Section 41B(1) is amended by omitting “have been sold to a person younger than 18 years” and substituting “have been

sold, or have after they are sold been delivered, to a person younger than 18 years”.

(2) Section 41B(1) is amended by omitting “in a place where tobacco products or herbal smoking products are sold from time to time” and substituting “in or from a place where tobacco products or herbal smoking products are sold, or after they are sold (at that place or another place) are delivered, from time to time”. 5

(3) Section 41B(1)(a) and (b) are amended by omitting “to have sold the products” and substituting “to have sold, or to have after they are sold delivered or arranged the delivery of, the products”. 10

18 Purposes for which powers may be used

Section 41C(2) is repealed and the following subsection substituted: 15

“(2) The powers given by section 41B must be used only for, and only to the extent necessary for, finding out the name and address of (or, if the address is not within the knowledge of the person asked, the name and any other identifying information within the person’s knowledge relating to) a person the enforcement officer concerned believes to have sold, or to have after selling them delivered or arranged the delivery of, tobacco products or herbal smoking products to a person younger than 18 years in or from a place where tobacco products or herbal smoking products are sold, or having been sold (at that place or another place) are delivered, from time to time.” 20 25

Legislative history

6 December 2010
9 December 2010

Introduction (Bill 267–1)
First reading and referral to Health Committee
