

EXAMPLES OF GOOD SMOKE-FREE LEGISLATION

The Framework Convention on Tobacco Control (FCTC), the international tobacco control treaty, requires all ratifying countries to adopt effective smokefree policies. More than 150 countries have ratified the FCTC and are legally bound to adopt effective smokefree policies.¹ The FCTC's governing body, the Conference of the Parties, has adopted guidelines for countries to follow in drafting and implementing smokefree policies that meet the treaty's requirements.² These FCTC guidelines³ provide extensive advice, including the following points:

Good smoke-free legislation:

➤ **Is comprehensive**

Effective smoke-free legislation should completely prohibit smoking in:

- Enclosed places of work
- Enclosed places open to the public
- All parts of public transport
- Outdoors within specified distances of doorways and windows
- Other appropriate public places.

➤ **Defines key terms**

Smoke-free legislation clearly defines all of the key terms used in the legislation, including:

- Public places. Public places should be defined broadly to include all places accessible to the public or places of collective use
- Workplaces. The definition of workplaces should include all parts of any place where work is performed.
- Enclosed places. Enclosed places should be defined in a way that makes clear whether smoking is prohibited or allowed in partially-enclosed places, for example any space covered by a roof or enclosed by one or more walls or sides, made of any material, whether temporary or permanent.
- Transportation. Transportation should be defined to include any means of transport for hire.

➤ **Penalizes Non-Compliance**

The legislation should provide clear penalties for each person or entity that does not comply with their duties. Penalties for noncompliance should be:

- Proportionate to the violation.
- Proportionate to the duty imposed by the legislation.
- Progressively more severe for repeat violations.

➤ **Provides for Enforcement**

Smoke-free legislation should include details about enforcement by:

- Clearly stating the responsibilities of different ministries or agencies.
- Coordinating across ministries or agencies.
- Allowing civil society organizations and individual citizens to go to court to seek enforcement of the legislation.

Things to avoid in drafting smoke-free legislation

X Exceptions that allow for separate ventilation. There is no safe level of exposure to tobacco smoke and separate ventilation does not eliminate tobacco smoke. Businesses that go to the expenses of installing ventilation systems will oppose future efforts toward a complete smokefree law.

- X** Lack or unclear definitions in the law. It is important that the all key terms in the law are clearly defined. Please see the section on Model Smoke-free Legislative for sample definitions.
- X** Providing an illustrative list of public places or work places. Lists create ambiguity about any place not listed and can lead to legal challenges to the legislation.
- X** Creating a duty without a corresponding penalty for noncompliance. Each person or entity that is required to do or refrain from doing something under the legislation should face a penalty for noncompliance.
- X** Imposing small fines only or imposing the same fine against the person in control of the premises as against the smoker. The owner of the premises has more control and therefore a greater duty than individual smokers. Other penalties, such as business license sanction, can be powerful enforcement tools.

Model Smoke-Free Legislative Provisions

The model provisions below incorporate essential elements for successful smoke-free laws: complete prohibition of smoking in enclosed or partially enclosed public places, workplaces and public transport; definitions of key terms; clear imposition of duties with corresponding penalties for noncompliance; and mandates for enforcement. The model provisions are meant to be a starting point for legislative drafting, recognizing that they will need to be adapted to fit the legal system, customs, and realities in any given country.

1. Definitions

- (a) '*enclosed*' or '*indoor*' means covered by a roof or roof-like structure or one or more walls or sides of any material, whether permanent or temporary.
- (b) '*means of public transport*' means any form or mode of transportation that carries passengers for hire or reward, whether locally, between places within the country, or internationally.
- (c) '*Minister*' means Minister of Health or his or her designate.
- (d) '*person*' means an individual or entity possessing a legal personality.
- (e) '*person responsible for the premises*' means the person who has control or responsibility over the premises or means of public transport, or employer, as applicable, and any agent or designee of such person.
- (f) '*public place*' means any fixed or mobile place to which members of the general public or segments of the general public ordinarily have access by express or implied invitation.
- (g) '*Smoke*' means to inhale, exhale, or handle a tobacco product that is producing any emissions.
- (h) '*workplace*' means any place where workers, regardless of whether they are employees, contractors, or volunteers, perform work or use incidental to their work. Vehicles used for work shall be considered workplaces.

2. Right to be free from exposure to tobacco smoke.

All persons have the right to be free from involuntary exposure to tobacco smoke.

3. Smoking prohibited in enclosed public places, workplaces, and means of public transport.

- (a) No person shall smoke in any part of any enclosed:
 - a. work place;
 - b. public place; or
 - c. means of public transport.
- (b) No person shall smoke within ___ metres of any doorway or passageway of the places mentioned in subsection (a), or any in outdoor waiting area.
- (c) No person shall smoke on the outside premises of any public place or workplace that primarily caters to youth under the age of ___ years or any outdoor public place where youth congregate.
- (d) No person shall smoke in any stadium or similar outdoor crowded space, or any other outdoor space specified by the Minister.

4. No smoking signs

The person responsible for the premises shall post signs prominently stating that smoking is not allowed, as prescribed by the Minister. Signs shall meet requirements prescribed by the Minister as to content, design, size, display, and any other particular. The Minister may require that signage conform to a specified template.

5. Duties under the law.

- (a) It shall be the duty of the person responsible for the premises to take all reasonable steps to ensure that no person smokes in violation of the provisions of this Act. Taking reasonable steps includes asking an offending person to stop smoking; demanding that the offending person who continues to smoke leave; refusing further service; in the case of an employee, imposing appropriate disciplinary measures; and seeking the assistance of law enforcement personnel if necessary.
- (b) The person responsible for the premises or means of public transport shall ensure no ashtrays are present in any enclosed area.
- (c) No person shall retaliate against any person who asserts his or her right to a smoke-free environment or who reports a violation.

6. Sanctions for non-compliance

Any person who violates any provision of this Act shall be subject to a fine, licensure sanction, and/or criminal sanction, as applicable, as provided in regulations.

7. Enforcement

_____ shall have the duty to inspect and take enforcement actions pursuant to this Act. [Specify which ministries/agencies are responsible for which type of place if more than one is designated as the inspection and enforcement agency.]

8. Citizens' suits

Any person may bring an action before the appropriate Court against any person, including any governmental official or agency, who or which is alleged to have violated any provision or failed to fulfill any duty under this Act. It shall not be necessary to prove harm resulting from the alleged violation.

- (a) Any action instituted under the provisions of this section shall be exempt from fees that otherwise might be required to institute an action.
- (b) Where it is established that the action brought under this section asserts one or more colorable claims, the person bringing the action shall be entitled to recover any costs incurred in bringing the action and all reasonable attorneys' fees.
- (c) Where a violation is established in an action brought under this section, the Court may award injunctive relief, statutory damages, and any other relief judged appropriate by the Court.

Links to sample legislation⁴

1. References to the national and sub-national legislations currently in force that most closely conform to best practice:

- (a) United Kingdom of Great Britain and Northern Ireland, Health Act 2006, <http://www.opsi.gov.uk/acts/acts2006/20060028.htm>
- (b) New Zealand, Smoke-free Environments Amendment Act 2003,

http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes

(c) Norway, Act No. 14 of 9 March 1973 relating to Prevention of the Harmful Effects of Tobacco,

<http://odin.dep.no/hod/engelsk/regelverk/p20042245/042041-990030/dok-bn.html>

(It should be noted however that the option of smoking sections is not recommended by the FCTC guidelines or by the World Health Organization.)

(d) Scotland, Smoking, Health and Social Care (Scotland) Act 2005,

<http://www.opsi.gov.uk/legislation/scotland/acts2005/20050013.htm>

Regulations: <http://www.opsi.gov.uk/si/si2006/20061115.htm>

(e) Uruguay, <http://www.globalsmokefreepartnership.org/files/132.doc>

(f) Ireland, Public Health (Tobacco) (Amendment) Act 2004,

<http://193.178.1.79/2004/en/act/pub/0006/index.html>

(g) Bermuda, Tobacco Products (Public Health) Amendment Act 2005,

<http://www.globalsmokefreepartnership.org/files/139.DOC>

¹ World Health Organization (5 October 2007). Updated Status of the WHO Framework Convention on Tobacco Control. Available at <http://www.who.int/tobacco/framework/countrylist/en/index.html>. Accessed on 11.09.2007

² 'Adoption of the guidelines for implementation of Article 8'. World Health Organization, Conference of the Parties to the WHO Framework Convention on Tobacco Control, second session, decision FCTC/COP2(7). Available online at: http://www.who.int/gb/fctc/PDF/cop2/FCTC_COP2_DIV9-en.pdf. Accessed 11.09.07

³ 'Adoption of the guidelines for implementation of Article 8'. World Health Organization, Conference of the Parties to the WHO Framework Convention on Tobacco Control, second session, decision FCTC/COP2(7). Available online at: http://www.who.int/gb/fctc/PDF/cop2/FCTC_COP2_DIV9-en.pdf. Accessed 11.09.07

⁴ Annex 2 – Links to sample legislation and resource documents. 'Adoption of the guidelines for implementation of Article 8'. World Health Organization, Conference of the Parties to the WHO Framework Convention on Tobacco Control, second session, decision FCTC/COP2(7). Available online at: http://www.who.int/gb/fctc/PDF/cop2/FCTC_COP2_17P-en.pdf. Accessed 11.01.07