

BILL NO. 2 OF 2022

A BILL

FOR AN ACT TO AMEND THE TOBACCO CONTROL ACT 2010

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Tobacco Control (Amendment) Act 2022.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.
- (3) In this Act, the Tobacco Control Act 2010 is referred to as the “Principal Act”.

Section 25 amended

2. Section 25 of the Principal Act is amended by—
 - (a) in subsection (1), deleting “fee specified in Schedule 3” and substituting “prescribed fee”;
 - (b) in subsection (3), deleting “up to one calendar year” and substituting “not exceeding 5 years”; and
 - (c) in subsection (4), deleting “on an annual basis in the appropriate application form” and substituting “in the form set out in Schedule 4”.

Section 26 amended

3. Section 26(3) of the Principal Act is amended by deleting “on an annual basis on the approved form in Schedule 4 with the specified fee in Schedule 3” and substituting “in the form set out in Schedule 4 with the prescribed fee”.

Section 26A inserted

4. The Principal Act is amended after section 26 by inserting the following new section—

“Transitional

26A.—(1) For the avoidance of doubt, any licence granted before the commencement of the Tobacco Control (Amendment) Act 2022 is valid for the remainder of the period of the licence unless the licence is earlier surrendered, suspended or revoked.

(2) Any application for a licence lodged before the commencement of the Tobacco Control (Amendment) Act 2022 and is yet to be processed must be processed in accordance with this Act, and any licence granted must be granted for a period not exceeding 5 years.”.

Section 34 amended

5. Section 34 of the Principal Act is amended after subsection (2) by inserting the following new subsections—

“(3) The Minister may, by order in the Gazette, and subject to any condition the Minister thinks fit, exempt a person from paying the prescribed fee under section 25 or 26 if the Minister is satisfied that the person—

- (a) paid the applicable prescribed fee for the licence granted for the period immediately prior to the period of a licence for which payment of the prescribed fee is due and payable;
- (b) did not manufacture, import or distribute any tobacco product or e-cigarette, or sell or barter suki, or cause or permit suki to be sold, in accordance with the licence granted, due to COVID-19 restrictions;
- (c) did not manufacture, import or distribute any tobacco product or e-cigarette, or sell or barter suki, or cause or permit suki to be sold, as the case may be, for the period of the licence granted, in part or for the entire period; and
- (d) incurred significant loss of revenue for the period of the licence granted.

(4) Notwithstanding sections 25(3) and 26A(2), a licence granted to a person exempted under subsection (3) is valid for a period not exceeding one year.”.

Schedule 3 deleted

6. The Principal Act is amended by deleting Schedule 3.

Schedule 4 amended

7. Schedule 4 to the Principal Act is amended by—

(a) deleting section 2 and substituting the following—

“Section 2: Fees due and payable (Sections 25(1) and 26(3))

- | | |
|---|--------------------------|
| 1. Manufacturer of tobacco products or e-cigarettes | <input type="checkbox"/> |
| 2. Importer of tobacco products or e-cigarettes | <input type="checkbox"/> |
| 3. Suki vendor | <input type="checkbox"/> |
| 4. Total amount due and payable | \$”; and |

(b) in section 4 in the table, deleting “(last calendar year)”.

TOBACCO CONTROL (AMENDMENT) BILL 2022

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Tobacco Control Act 2010 (**'Act'**) provides for *inter alia* the licensing of manufacturers, importers and distributors of tobacco products and e-cigarettes, and suki vendors.
- 1.2 Under section 25 of the Act, a person must first obtain a licence in order to conduct the business of manufacturing, importing or distributing tobacco products or e-cigarettes.
- 1.3 Under section 26 of the Act, a person must first obtain a suki vendor licence in order to conduct the business of selling or bartering suki, or causing or permitting suki to be sold.
- 1.4 Accordingly, a licence to carry out any of the activities under sections 25 and 26 of the Act is valid for one calendar year provided a person makes an application accompanied with the prescribed fee. This however is an administrative burden and is also operationally cumbersome for a person who intends to manufacture, import or distribute tobacco products or e-cigarettes, or who intends to sell or barter suki, or cause or permit suki to be sold.
- 1.5 The Tobacco Control (Amendment) Bill 2022 (**'Bill'**) therefore seeks to amend the Act to extend the maximum period of a licence from one calendar year to 5 years.
- 1.6 The Bill also seeks to amend the Act to exempt a person from payment of the prescribed fees where the person did not operate as outlined in the person's licence due to difficulties faced as a result of COVID-19 restrictions.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.

- 2.2 Clause 2(a) of the Bill amends section 25(1) of the Act to remove the reference to Schedule 3 to align the provision to the amendment made in clause 6 of the Bill.
- 2.3 Clause 2(b) of the Bill amends section 25(3) of the Act to extend the maximum period of a licence required for manufacturers, importers or distributors of tobacco products or e-cigarettes, from one calendar year to 5 years.
- 2.4 Clause 2(c) of the Bill amends section 25(4) of the Act to align the provision to the proposed extension of the maximum period of a licence.
- 2.5 Clause 3 of the Bill amends section 26(3) of the Act to align the provision to the amendments made in clause 2 of the Bill.
- 2.6 Clause 4 of the Bill amends the Act by inserting section 26A into the Act which provides for transitional provisions to give clarity on the grant of a licence under the Act prior to the commencement of the amending legislation. The licence will continue to be valid for the remainder of the period of the licence unless the licence is earlier surrendered, suspended or revoked.
- 2.7 Clause 4 of the Bill also provides that any application lodged before the commencement of the amending legislation and is yet to be processed must be processed in accordance with the Act, and any licence granted must be granted for a period not exceeding 5 years.
- 2.8 Clause 5 of the Bill amends section 34 of the Act to empower the Minister to exempt, by order in the Gazette, any person from payment of the prescribed fee required under section 25 or 26, provided the Minister is satisfied that the person—
- (a) paid the applicable prescribed fee for the licence granted for the period immediately prior to the period of a licence for which payment of the prescribed fee is due and payable;
 - (b) did not manufacture, import or distribute any tobacco product or e-cigarette, or sell or barter suki, or cause or permit suki to be sold, in accordance with the licence granted, due to COVID-19 restrictions;
 - (c) did not manufacture, import, or distribute any tobacco product or e-cigarette, or sell or barter suki, or cause or permit suki to be sold, as the case may be, for the period of the licence granted, in part or for the entire period; and
 - (d) incurred significant loss of revenue for the period of the licence granted.
- 2.9 Clause 5 of the Bill also provides that where a person is exempted from payment of the prescribed fee, the licence granted is valid for a maximum period of one year.

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2.10 Clause 6 of the Bill amends the Act by deleting Schedule 3.

2.11 Clause 7 of the Bill amends Schedule 4 to the Act to align section 2 of the application form for a licence which relates to fees due and payable, to the proposed amendments.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Minister responsible for health and medical services.

A. SAYED-KHAIYUM
Attorney-General