

## Chapter 11

## TOBACCO RESTRICTION ACT

**Sections:**

- 13.1102 Definitions.**
- 13.1104 License required.**
- 13.1112 Suspension, revocation, and nonrenewable of licenses.**
- 13.1113 Penalties.**
- 13.1114 Tobacco sales hearing board.**

**13.1102 Definitions.**

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Director" means the Director of Human and Social Services.
- (2) "Board" means the Tobacco Sales Hearing Board.
- (3) "Outlet" means any location, whether fixed or mobile, from which tobacco products are sold.
- (4) "Person" means an individual, partnership, or corporation.
- (5) "Public place" means any area to which the public is invited or in which the public is permitted, including but not limited to any right-of-way, mall or shopping center, park, playground, and any other property owned by the American Samoa Government.
- (6) "Tobacco product" means any product or commodity of which tobacco is a component, including, but not limited to cigarettes, cigars, raw processed or unprocessed tobacco, and chewing tobacco.
- (7) "Vending machine" means any machine or device designed modified or used to dispense cigarettes, cigars, tobacco or tobacco products upon the insertion of coin, slugs, tokens or paper money.

**History:** 1994, PL 23-17,2006, PL 29-33.

**13.1104 License required.**

Beginning on January 1, 1995, it shall be unlawful for any person to sell or distribute cigarettes or other tobacco products unless that person holds and maintains a valid license issued by the Director of Human and Social Services. The Director shall issue a license to all eligible applicants permitting the sale of tobacco products from a specific outlet, which shall be valid for a period of one year.

**History:** 1994, PL 23-17,2006, PL 29-33.

**13.1112 Suspension, revocation, and nonrenewal of licenses.**

The Board shall suspend, revoke or not renew a license for a particular outlet after notice and opportunity to be heard is given.

- (a) In the case of a first violation, the license shall be suspended for a period of not less than 14 days and not more than 30 days.
- (b) In the case of a second violation, the license shall be suspended for not less than 30 days and not more than six months.

(c) In the case of three violations or more the license shall be revoked for the period of no less than two years within a three year period. The Board, in this instance, may also revoke a license permanently.

(d) The Director shall serve the licensee with notice of any adverse action, including a description of the violations alleged, a statement that the licensee may contest the decision by serving a written demand upon him within 10 days, and a statement that if the licensee does not appear at the hearing the Board will determine the case without his presence and render a decision accordingly.

**History:** 1994, PL 23-17, 2006, PL 29-33.

### **13.1113 Penalties.**

(a) In addition to the provisions of section 13.1112 above, any person that violates any provision of this chapter shall be subject to the following civil penalties.

- (1) Not less than \$1,000.00 for the first violation.
- (2) Not less than \$2,000.00 for the second violation.
- (3) Not less than \$3,500.00 for the third violation.
- (4) \$5,000.00 for each violation in excess of three.

(b) Forms for citation for violation of the provisions of this chapter may be designed and approved by the Director of the Department of Human and Social Services.

(c) This act may be enforced by the designated officials of the Department of Human and Social Services, police officers of the American Samoa Government, and personnel deputized by the Director.

(d) Fifty percent of all funds that are derived from this section shall be segregated into an account which shall be used solely for the purpose of supporting enforcement of this chapter. Thirty percent of all funds that are derived from this section shall be segregated into an account which shall be used solely for smoking prevention and cessation program efforts undertaken by ASG within the Territory. The balance of funds that are derived from this section shall go the general fund.

**History:** 1994, PL 23-17,2006, PL 29-33.

### **13.1114 Tobacco Sales Hearing Board.**

There shall be a Tobacco Hearing Board consisting of three members appointed by the Governor to serve for four year terms. The Board shall select its chairperson. The functions of the Tobacco Hearing Board shall be as follows:

- (a) to hear and determine cases pursuant to violations of this chapter; and
- (b) to render decisions after hearing cases, and to issue penalties according to the provisions set forth in this chapter. No action against a license shall be effective until after the Tobacco Sales Hearing Board has rendered its decision; and
- (c) the Board has the authority to make its own rules and regulations to further enforce the provisions of this chapter but such rules and regulations must not be inconsistent with the provisions of this chapter.

Should the Board fail to meet within thirty days' notice of any case, controversy, application or any other request which requires the Board's action, the Director is authorized to assume the duties and responsibilities of the Board in order to make an

interim or final and binding decision on any matter. The decision of the Director in such an instance, shall be deemed the decision of the Board, as if such decision was reached by the Board itself. All such decisions shall be made in writing and shall be supported by facts and findings specific to the action. The Director's final decision shall comply with this chapter and any other rules officially promulgated by the Board.

**History:** 1994, PL 23-17,2006, PL 29-33.