

Guidelines

for Implementing
“The Cigarette and Other Tobacco Products Act-2003”
i.e. COTPA 2003 and subsequent rules

**A ready reckoner for
District and Sub-District level
Law Enforcers/Authorities of Kerala**



DEPARTMENT OF HEALTH SERVICES

Kerala



RAJEEV SADANANDAN
PRINCIPAL SECRETARY



Message

Tobacco is possibly one of the greatest causes of preventable and premature deaths in human history. It is the single most important risk factor for major non communicable diseases. Worldwide around 1.1 billion people smoke tobacco. This is expected to increase to 1.6 billion by the year 2025. In the high income countries, smoking has been in overall decline for decades, although it continues to rise in some groups. In low and middle income countries, by contrast, cigarette consumption has been increasing. In India, it is estimated that one million fatalities occur every year due to tobacco smoking. Smoking also affects the health of non smokers. Babies born to smoking mothers have lower birth weights and are more likely to die of sudden infant death syndrome than babies born to non smokers. Adult non- smokers face small but increased risks of fatal and disabling disease from second hand smoke.

The Government of India enacted the Cigarette and Other Product Tobacco Act (COTPA) in the year 2003 with the objective of protecting the health of the people by decreasing the epidemic of smoking tobacco. This act has been in existence for nearly a decade now. It is therefore a good time to assess its implementation status across various parts of our country. It is heartening that surveys done in a number of cities and districts across India have reported good compliance with the act.

In Kerala, the Global Adult Tobacco Survey 2009-10 conducted under the coordination of the Ministry of Health and Family Welfare, Government of India, has brought out that 21.4 per cent of adults, 35.5 per cent of males and 8.5 per cent of females use tobacco in any form. Going by these, as many as 2.8 million people in the State face the threat of premature death on account of tobacco use. Sadly the prevalence of tobacco use is much higher among the persons with lower socio-economic status making them comparatively more vulnerable to non communicable diseases also. We also have data that the use of chewable tobacco is on the increase in the state especially in the younger population.

In the last four-five years, some significant steps have been taken by Kerala State Government to break new grounds in controlling the tobacco menace in the state. Many district administrations made concerted efforts to stop smoking in public places and protect minors from the deadly poisonous substance ie Tobacco. Kottayam and Ernakulam districts were declared as smoke free by concerned district administrations in 2007 & 2011 respectively. Now many educational districts are preparing for achieving the 100% compliance status of section-6 COTPA.

Law enforcement is a key strategy for tobacco control. I am glad to know that the Directorate of Health Services has developed an implementation guidelines for the for the law enforcement. I am sure this booklet will serve as a handbook for District Level Law Implementers in the State and a valuable addition to resources for reduction of tobacco consumption in the state.

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Message

It is really heart rending to note the stark revelation by the WHO that the greatest public health hazard being faced by humanity today is smoking tobacco and using its products, which are known to cause annually death or deadly diseases to 6 million people in the world and one million in India. The use of tobacco is one of the causes of death which humans themselves can keep at bay.

The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) is a comprehensive law governing tobacco control in India. As smoking is being banned in public places people are now beginning to expect freedom from the toxic tobacco fumes.

I thank Hon`ble Chief Minister Mr. Oommen Chandy, Hon`ble Health Minister Mr. VS Sivakumar and Hon`ble Principal Secretary (Health) Mr. Rajeev Sadanadhan for their encouragement and continued support to the tobacco control efforts of Department of Health Services.

I congratulate all the dedicated officers of various departments, Civil Society Groups and State Nodal Officer (Tobacco control) Dr. AS Pradeep Kumar ADHS who worked passionately to implement tobacco control measures in the state.

Considering the huge capacity building needs of law enforcers in the State, a need was felt since long to have state specific implementation guidelines for district and sub-district law enforcers. I acknowledge the efforts of The International Union against Tuberculosis and Lung Diseases (The Union), New Delhi for collaborating with Department of Health and Family Welfare, Kerala to prepare this document. Besides the enforcement procedures, important government notifications, office orders from the state and districts are also annexed. This document will serve as a ready reckoner for district and sub district level law implementers.

I hope that all of us will sustain our efforts in making Kerala as a Tobacco free State.

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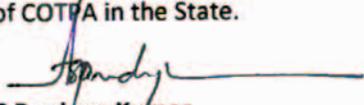
Preface

Kerala is one of the pioneer states in India in terms of effective implementation of Tobacco Control Policies. Kottayam becomes the first district in the country to become “Smoke Free” way back in 2007. This has been made possible because of the able leadership and strong administrative support of District administration and pro-activeness of Health department. Civil society organizations collaborated with key stakeholder departments at several level in establishing the system for tobacco control and generating public awareness.

Directorate of Health Services has initiated three different campaigns at state level i.e. Smoke Free Home, Smoke Free Workplace and Tobacco Free Educational Institutions. This covered 260 local body wards, 1400 educational institutions and 130 workplaces in the state. These efforts made sustainable impact on Tobacco Control at grass root level.

State of Kerala is not under National Tobacco Control Programme (NTCP), but state strictly follows the principles of NTCP in formulation of proceedings and practices. We have notified district level nodal officers and monitoring systems in all districts. Besides enforcement, there is a major focus on Information, Education and Communication activities across the state. Also, capacity building of officials of various departments is being carried out and active monitoring of the activities is done by the health department in coordination with other departments.

Prohibition of smoking in public places and tobacco free educational institutions are the two most important strategies for an overall tobacco control in the country. Implementation of COTPA is the responsibility of several key departments, there is a huge capacity building needs in the state about the law among the law enforcers. To equip all the law enforcers about the provision of the law and enforcement procedures, an implementation guideline has been prepared by the Department of Health, Kerala and The International Union Against Tuberculosis and Lung Diseases, New Delhi. All the important government orders have also been annexed in this booklet. I am sure that all law enforcers will find this document a ready reckoner for ensuring effective implementation of COTPA in the State.


Dr. AS Pradeep Kumar
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A. Section 4: Prohibition of Smoking in Public Places

1: Rationale

Tobacco smoking causes a wide-range of diseases and adverse health impacts that affect nearly every organ of the body. The smoke from a smoker's *beedi*, cigarette and other smoking forms (called Second Hand Smoke (SHS)) also causes serious health problems to those exposed to it. SHS has more than 7000 different chemicals, 69 of which are known to be associated with causing cancer.¹ Exposure to second-hand smoke causes an estimated 5 % of the global burden of disease, slightly higher than the burden from direct use of tobacco (4%), but this is largely concentrated in a few countries.² According to GATS 2009-10, there are 111.2 million current smokers in India who expose 52 % adults at home, 30 % adults in indoor workplaces and 29 % adults in any of the public places to the harmful effects of SHS.³ There is no safe level to exposure to SHS.⁴ Only 100% smoke free (complete ban on smoking) can give complete protection. The exposure to second-hand smoke (SHS) is known to cause serious health problems mainly among females and children. The associated effects of SHS exposure include heart diseases, lung cancer, severe asthma attacks, sudden infant death syndrome, and many others. The common problems faced by the women who are exposed to SHS include reduced fertility, low birth weight babies, stillbirths and cervical cancer among others. Globally, about one third of adults are regularly exposed to SHS. Worldwide exposure to SHS causes nearly 603,000 premature deaths of non-smokers.⁵

In India, smoking tobacco accounts for nearly one million premature adult deaths every year which is about 10% of all deaths at all ages. There are multiple reasons for prohibition on smoking through smoke-free interventions. First, the ban on smoking in public places is a provision under current law, and is widely supported by the public and local implementers. Second, smoke free public places reduce exposure to SHS and help to “denormalise” (reduce) social acceptance of smoking in public places. Third, smoke free laws deter initiation, reduce consumption and promote quitting among existing users. Hence restriction on smoking is need of the hour.

Section 4 of COTPA 2003 and subsequent rules notified (*The Prohibition of Smoking in Public Places Rules, 2008*) prohibits smoking in public places with the aim to protect people from SHS exposure.

2: Key terms and definitions

Second Hand Smoke (SHS): It is a mixture of smoke exhaled by a smoker and smoke emanating from the burning end of a cigarette/*beedi*/cigar.

Exposure: Subjecting a non-smoker to SHS.

Public place: Any place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, railways waiting room, amusement centres, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances, and the like which are visited by general public but does not include any open space. Open spaces under the Act shall not include any place visited by the public such as open auditoriums, stadiums, railway stations, bus stops/stand and such other places. Public places also include workplaces, shopping malls and cinema halls etc..

Violation: Any act of breach and deviation from the provisions of Section 4.

Challan: It is an official procedure to take action against any violator. **Challan** is a prescribed format. (Annexure 1)

Fine: It is a penalty for violating provision of COTPA 2003

Offence: Any act of violation made punishable under COTPA, 2003

3: Provisions of the law

Section 4 of COTPA (Prohibition of smoking in public places)- It is the responsibility of the owner/manager/In charge of the public place to make his are smoke free. It mandates that every owner, manager or in-charge of a public place must ensure the following:

- Display the “**No Smoking**” signage prominently at the entrance, each floor and conspicuous places within the public place
- The signage must be in English or one Indian language as applicable (locally prevalent language)
- Displays the name of the person to whom a complaint may be made. The specifications of signage is annexed⁶
- Smoking area is permissible only in restaurants with seating capacity of 30 or more; hotels with 30 or more rooms and airports. Such area is to be used only for the purposes of smoking. No other service(s) are allowed there. Specifications as applicable are attached as (Annexure 3). The room needs to be designated as per the specification detailed by the Rules⁷ and monitored by relevant implementers
- Individual is liable for fine upto Rs 200/- for violating section 4, but if the manager, owner or in-charge of a public place fails to act on the report of the violation, s/he would be liable to pay a fine equivalent to the number of individual offences (additionally see Annexure 4 for FAQs on Section 4 implementation)



4: Commonly observed violations under Section 4



A person is lighting up a cigarette at bus stand, an open public place which is covered under the provisions of the law



A restaurant not displaying a "No Smoking signage" and a person is lighting a cigarette within the enclosed space



Warning signage other than that specified by the law



Presence of smoking accessories such as ashtrays and matchboxes



A signage which has not displayed the name of the incharge/ authorized officer to whom the complaint can be made

5: Key stakeholders for smoke free implementation

Under the Act and Rules, various Government/ Non Govt. officials/persons have been authorized.⁸ In addition, State Government has notified more officers (*Annexure 5*). All key stakeholders, as listed below, must also be made aware of smoke free rules.

1. Government: Head of all Departments at State and District level, urban and rural local bodies including *Panchyati Raj Institutions*, all Govt. offices/sections and all those in-charge of public places with access to public gathering such as bus stands, railway station, markets, parks, religious places, monument, and such places.
2. Other stakeholders: Different trade associations (like Hotel, bar, restaurants, eateries, clubs, taxi and bus owners, transporters, shops & markets etc.), managers of malls and multiplexes, professional regulatory bodies (Bar, Medical, Press etc.), all private and public workplaces including private offices (like clinics, lawyer's chambers), and religious institutions etc.

6: Road map for enforcement at different levels

1. Notification of State Nodal officers and District Nodal officers (*Annexure 5*)
2. Health department/ district administration to communicate the law enforcers for enforcement of section 4 in the selected public places (*Annexure 6, 7, 8 & 9*)
3. There has to be a separate budget head for depositing the fines collected
4. Print *challan* and receipt books (*Annexure 2*) and make available to each of the authorised officers at district or sub-district level
5. Capacity building of enforcers through structured hands on trainings and role play exercises
6. Public awareness about the law is essential. Public notices by local administration expressing smokefree declaration or intent to go smoke-free must be circulated. Provisions and guidelines for implementation of smoke free rules should also be part of the public notice
7. Formation of enforcement squad. Few districts in Kerala has already notified the enforcement squads and are operational (*Annexure 10*)
8. Conduct baseline and end line compliance survey⁹ to check the level of law enforcement and opinion polls for getting public mandate
9. Appropriate media support before and after enforcement of the law
10. Continuous appraisal of all stakeholders
11. Periodic review of the progress and challenges at District / State steering committee
12. Maintain and document all reports regular monthly basis

7: Training needs for Enforcers and Stakeholders

Series of workshops should be planned at State, District and sub District level to orient and train the law enforcers with in- depth understanding of ill effects of tobacco on human health, various provisions of the law and its enforcement process. Sensitization meetings or workshops must be arranged for the other stakeholders regarding the importance of smoke free environment and legal obligations.

8: Enforcement Mechanism and Strategies

- Every authorized person under the COTPA is a public servant (Section 25) and is entitled for protection for action taken under COTPA (Section 29)

- The offence is compoundable and bailable
- The fine under this section is up to Rs 200
- The authorized person shall possess a *challan* book and receipt book
- The authorized person has power to impose a fine and compound the offence. They also have the power to fine the in-charge of any public place for violation of any provision of the law. The fine amount will be equivalent to the number of individual offences
- Authorized person has power to detain the violator under Section 25 of the act unless the accused doesn't disclose his identity or the officer is satisfied that the accused will duly respond to any summon/ proceeding. Then the detained person will be produced before a magistrate of the nearest court of law with *challan* under CrPC 1973. In case the offender does not cooperate or absconds, then the same has to be reported to the Police for further proceedings under provisions of IPC
- In case the offender does not agree for compounding by paying the fine on the spot, the *challan* shall be produce to the court by the authorised person. A day for the trial shall be fixed by the authorized persons
- There are several other legislations which support smokefree efforts and the individual's right to smokefree environments (*Annexure 11*)

9: Monitoring progress for Section-4 enforcement (*Annexure 12*)

- Compile monthly reports from each Department/in charge of the jurisdiction
- Compile the reports of violations/*challans* issued by enforcement officers/flying squads
- The expenditure of printing of the boards and no smoking signage has to be borne by the owner/manager/incharge of the public place from any funds. The display of the signage is the statutory requirement of the law

- NGOs can be involved for massive awareness and for issuing awareness notices
- Any violation of smoke free rules can be reported at National Toll Free Help line No. 1800-110-456 (24x7) which is now operational throughout the country

B. Section 5: Preventing tobacco advertising, promotion and sponsorship (TAPS)

1: Rationale: Why ban ads

Tobacco Advertisements, promotions and sponsorships (TAPS) are very effective ways of targeting, attracting and retain potential and existing users. There is a strong and conclusive evidence that TAPS contributes to increases in tobacco consumption. Globally, research has confirmed that regulation of TAPS is a vital factor for reducing tobacco use and early experimentation, thus preventing more people from taking up tobacco use and reducing the public health burden.¹⁰

Comprehensive bans, which prohibit the use of all marketing strategies, reduce tobacco use among people of all income and educational levels.¹¹ There is a conclusive evidence which establishes a relationship between tobacco advertising and tobacco consumption in India. The youth have been exposed to tobacco advertisements and their receptivity to tobacco marketing is significantly related to increased tobacco use among students. This association suggests the need to strengthen policy and program based interventions in India to reduce the influence of such exposures.¹² As per GATS, among all adults, 28 percent noticed some form of advertisement or promotion of cigarettes, 47 percent noticed advertisement or promotions of beedis and 55 percent noticed some advertisement or promotion of smokeless tobacco products.

2: Key definitions and terms

TAPS are any form of commercial communication that promote the use of tobacco products either directly or indirectly. Examples include direct advertising of products on television, radio, print and outdoor media, or through indirect advertising¹³ such as attractive product packaging, point of sale advertising, price discounts, product placement at retail, sales promotions, internet promotions, use of tobacco brand names, logos, or brand identities on non-tobacco products, educational, social and charity activities or events, placement of tobacco products in places where they are noticed, etc.. As per COTPA, 2003 and the related rules :

- **Advertisement means** - Any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas.
Explanation-Display, cause to display, permit or authorise to display, sell or cause to sell or authorise to sell a film or video tape, leaflet, handbills, document, erect, exhibit, fix, retain upon or over any land, building, wall, hoarding frame, post or structure upon or in any vehicle any advertisement of cigarette and other tobacco products.
- **Direct advertisement:** Direct visibility or oral representation of the tobacco products
- **Indirect advertisement** means: (i) the use of a name or brand of tobacco products for marketing, promoting or advertising other goods, services and events, which include: (ii) the marketing of tobacco products with the aid of a brand name or trademark which is known as, or in use as, a name or brand for other goods and service (iii) the use of particular colours and layout and/or presentation those are associated with particular tobacco products; (iv) the use of tobacco products and smoking situations when advertising other goods and services
- **Distribution**, includes distribution by way of samples, whether free or otherwise

3: Provisions of the law

Section 5 of COTPA focuses on the ban on direct or indirect advertisement, promotion and sponsorship of tobacco products, commonly termed as TAPS. The authorised officers have power of entry, search, and seizure in case of violation of Section 5 of COTPA¹⁴, and the provisions of code of criminal procedure 1973 shall apply to every search and seizure.¹⁵ The offence is bailable¹⁶ and is non-compoundable.¹⁷ In the first conviction, imprisonment for a term which may extend to 2 years or fine which may extend to Rs.1000 or both (Section 22 of COTPA). In case of second conviction, imprisonment for a term which may extend to 5 years or fine which may extend to Rs. 5000 (Section 22 of COTPA). However, there are two exceptions/allowances given under this provision:

- (a) advertisements of tobacco product **in or on a package** containing tobacco product;
- (b) advertisements of tobacco product which is displayed at the entrance or inside a warehouse or a shop where tobacco products are offered for distribution or sale. This board need to meet specific criteria under rules¹⁸, these are: The size of the board at the entrance of warehouse/shop where cigarettes or any other tobacco products is offered for sale shall not exceed sixty centimeters by forty-five centimeters.
 - There must be a health warning on the top edge of the point-of-sale boards [20cmsX15cms] namely (i) Tobacco causes cancer (ii). Tobacco kills and must be prominent, legible and in black colour with a white background.
 - This board shall only list the type of tobacco products and no brand pack shot, brand name of tobacco product or other promotional messages shall be displayed. The display board shall not be backlit or illuminated.

At the same time, the law prohibits the smoking scenes and tobacco use or promotion in films, television and print media. To ensure this, the Ministry has notified rules in consultation with the Ministry of Information and Broadcasting. These rules have come into force from 2nd October, 2012.

4: Commonly observed TAPS violations

i) Point of Sale violation



This is the most prominent violation that the industry adopts since vendors and industry mutually benefit from more customers and increased sales. Large-sized boards cover the entire kiosk to show the colour and brand of cigarette it promotes.

iii) Violations by industry through industry or social events



A prominent cigarette company instituted an award to promote its brands. The awards were designed to complement the advertisements run by the company showing brave people in difficult situation and becoming a winner after smoking the cigarettes. In 2005, a Chandigarh based NGO filed a PIL in the Punjab and Haryana High Court to prevent the company from these promotions. The decision forced the company to rename its award from 2005 (see www.burningbrain.org, <http://tobaccocontrol.bmj.com/content/15/5/350.2.extract>).

iv) Indirect Advertising in Outdoor hoardings



An indirect advertisement by a famous beedi company using brand name to sell a tea product, on a bus panel.

ii) Print media violation



An outdoor advertisement of famous chewing tobacco brands at a cricket match in Mohali in 2011.

A prominent Hindi newspaper published an advertisement on Dusshera (October 3, 2008, Bhopal edition). A complaint was filed by civil society to the District and State Tobacco Control Cell with copy to Press Council of India (national and state chapter) and the Press Club. The paper printed an apology and in return published three full-length articles on harms of tobacco use. Source: Indian Media Centre for Journalists, 2008

iv) Indirect Advertising as Outdoor hoardings



5: Key stakeholders for implementation of Section 5 at State and district level

The State/ District Level monitoring committee (*Annexure 13*) is a lead agency to monitor and enforce the law against violators:

Key enforcers: As per COTPA, officers have been authorized by Govt. of India at State and District level who can take action for any reported violation or pre-empt action on their own. They include officers from departments of Customs, Central Excise, Sales Tax, Health, and Transport Department; labour, small scale Industries, state Food and Drug Administration and police.²⁰

6: Road map for enforcement at district level

- Authorized persons shall act on violations observed by themselves or by complaint
- The squad/ authorized officer shall act on the reported violation in the following manner:
 - The authorized officers have power of entry, search and seizure under the COTPA. Every authorized officer (if acts singly) shall follow the procedure for entry, search and seizure etc. as per the method adopted by their own Department. Instead of single authorized officer it is better to conduct the raids, search and seizures with the flying squads.
 - For example, the Police can lodge first information report (FIR), Food Inspector/Food Safety Officer will adopt the method adopted for collecting food samples as per the Food Safety and Standards Authority of India (FSSAI, 2010); Drug Inspectors can adopt the method adopted for collection of drug samples as per Drug and Cosmetics Act (1940); Excise Inspectors can adopt the method adopted for products found violating Sales Tax Act.
- The authorized officers/flying squads shall have challan book, receipt book, seizure memo (*Annexure 14*) and a surety bond (*Annexure 15*) form with them during the operation.
- A complaint shall be made to the court of Chief Judicial Magistrate (*Annexure 16*) about the offence and duly filled challan and seizure memo shall be attached with the complaint.
- During the operation, try to involve the independent witnesses.
- Photographs of the advertisement must be taken and developed and the CD of the photograph has to be produced to the Hon'ble Court for evidence.
- The in-charge of the squad/authorized officer will produce the seized material in the court of law. The seized material shall be produced to the court of law at an early date, or retained by the confiscating officer for a period not exceeding 90 days from the date of seizure unless the approval of the Hon'ble Distt. Magistrate /Distt.& session Judge is obtained of the jurisdiction.²¹
- In case of large advertisement boards or like material which would be difficult to be seized/removed, the same may be sealed at the same place and matter to be taken to the court of law in the form of *challan* for further orders.

There are other legislations which also support implementation of section 5 of COTPA (*Annexure 17*).

C. Section 6: Protecting minors from tobacco use

1: Rationale

Tobacco dependence is a “pediatric disease,” because most people begin tobacco consumption as adolescents and are likely to become dependent on nicotine. More than 39% of smokers and 40% of smokeless tobacco users initiated tobacco use before the age of 17 years²² when they were far too young to understand the risks of tobacco use like addiction or to resist social expectations. In spite of the fact, Everyday more than 5,500 children start tobacco use in India.²³

Section 6 of COTPA 2003 provides a clear need to protect the children and youth from tobacco use by restricting easy access of tobacco products to and by minors.

2: Key terms and definitions

Minor: A person below the age of 18 years²⁴

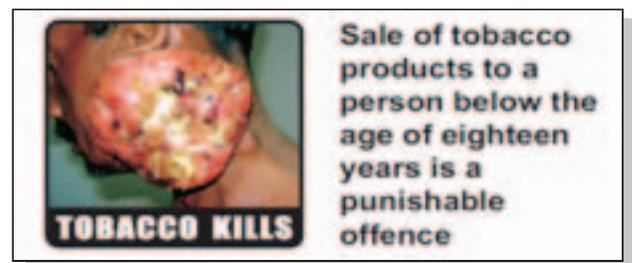
Educational Institution: It means any place or center including any school/college and institution of higher learning where education instructions are imparted

3: Provisions of the law

Section 6 of the COTPA is aimed to restrict the access of a minor to tobacco products. The notified provisions related to the section 6 are as follows:



Option I



Option II

3.1: Section 6 (a)-Prohibition on sale of tobacco products to and by persons below the age of 18 years

The Owner/manager/in-charge of affairs of the place where tobacco products are sold shall ensure that²⁵:

- a) A board from the two option shown, is at the entrance of the place where cigarette and other tobacco products are sold in a manner as given below :
 - i. Minimum size of the board should be 60cm x 30cm with white background.
 - ii. The board should contain the warning “sale of tobacco products to a person below the age of 18 years is a punishable offence”.
 - iii. The board shall not have any advertisement / promotional messages / pictures / images of cigarette and any other tobacco products.
- b) No tobacco product is handled or sold by minors.
- c) No tobacco product is sold through a vending machine.
- d) No tobacco products are displayed in a manner that enables its easy access to minors.
- e) The seller of tobacco product shall confirm that the buyer of tobacco product is not a minor. In case of doubt the seller may request the buyer to provide appropriate age proof/identity proof.

3.2: Section 6 (b) Prohibition on sale of cigarette and other tobacco products around educational institutions

Vice chancellor / Director / Principal / Headmaster / In-charge of an educational institution shall ensure the following²⁶:

- a) Display of Board – All educational institutions should have a board on their boundary wall or at the entrance of their main entrance. The board should state **prominently** that “sale of cigarette or any other tobacco products in an area within the radius of 100 yards of the educational institution is strictly prohibited; the offence is punishable with a fine upto Rs. 200”.
- b) Measurement of the distance: distance of 100 yards shall be measured radially from the outer limit of boundary wall / fence or as the case may be, of the educational institution, for the location of a tobacco vendor or point of sale.



3.3: Penalty provision

Violation of any provision(s) Section 6 is a punishable offence with a fine up to Rs. 200. Officials of different Government departments/ Institutions/ PRIs have been authorized to act against the violations (*challan* and compound the offences).²⁷ The In charges of the educational institute is authorized to take action against violation under Section 6 around and in his institute.

3.4: Other acts, rules and guidelines that support implementation of section 6 rules:

- CBSE circular on Tobacco Free School/Educational Institution²⁸
- NTCP Guideline for Teachers²⁹
- WHO’s Comprehensive School Health Policy for governments³⁰

4: Key stakeholders for law implementation

Government

- Health Department
- Education Department
- Local Self Government Bodies i.e. Municipalities, *Panchayats*, Cantonment Boards, etc.
- Police (Home) Department
- All other departments notified to act and compound in case of violation of the section 6
- PRIs

Other Key Stakeholders

- Political Leaders/Panchyat representatives of the respective area
- Student Unions (in case of University / College)
- Parents Teachers Association (PTA) / Parents Facilitator Meet (PFM)
- Tobacco vendors Shopkeeper’s Association / Market Association
- Media (Print and Electronic both)
- Civil Society groups

5: Road map for enforcement at District and State level

Department of health services/education/district administration to issue circulars/office orders (*Annexure 18, 19*) to concerned stakeholders to comply to the law. As a good practice public notices to inform relevant stakeholders shall be issued by the school authorities/NGOs. The punishment/penalty provisions should also be mentioned in the circular and public notice. These can be to inform the jurisdiction about the:

- Display of mandatory boards/signage at tobacco selling shops;
- Warning boards for educational institutions with the penalty provisions.

Additionally the education Department has also issued circulars to all educational institutions within their jurisdiction to make all educational institutions tobacco-free. In addition the Ministry of Human Resource Development has issued guidelines to tobacco-free institutions, whereby Central Board for Secondary Education (CBSE) adopted these for all their school.³¹

6: Training needs for Enforcers and Stakeholders

Sensitization and orientation of Education department officials, administrators of educational institutions and teachers/ academicians is very important for adequate enforcement and sustainability of the initiatives. In person meetings/ orientation programmes / workshops can be organized with the stakeholders like senior, politicians, bureaucrats, representatives of Local-self Government Body, media and civil society groups. Head/in-charge of the educational institutions and teachers can also be oriented regarding their responsibility related to tobacco control by inducting the subject in their periodic training /refresher courses.

The in charge of the educational shall serve awareness notice to all the vendors around the educational institute not to sale tobacco products within 100 yards of educational institute with a copy to the SDM and BMO concerned.

7: Monitoring progress for Section 6 (a) and 6(b)

Periodic enforcement drives for implementation of section 6 (a) & (b) shall be ensured. Besides the authorized persons to take action for violations of section 6, district level or sub district level enforcement squads can also take action under section 6 (*Annexure 11*). The Government of Kerala has issued instructions to constitute School Protection Committee in each educational institution (*Annexure 13*). The authorized persons/squads must be oriented and equipped with the *challan* book, operational procedure of *challaning* and compounding. Education department may include the Tobacco Free Institution's guidelines in the monitoring checklist being used by the authority during their visit to any institution.

D. Section 7, 8 & 9: Warning about harms of tobacco use through pictorial health warnings

1: Rationale

Pictorial health warnings (also called pack warning or graphic health warnings) on tobacco product package have been scientifically recognized and are shown to be an effective measure of tobacco control in many countries. Strong pictorial health warnings effectively inform youth and people with low awareness of harms of tobacco use and those with lower educational status. Virtually all tobacco users are exposed to pack warning; for example a pack-a-day smoker is potentially exposed to them over 7,000 times per year.³² Large and effective pictures with strong messages on tobacco product packages have been found to lead to greater awareness of harms associated with tobacco use and an increased desire to quit³³, even among youth.³⁴ Pictorial warnings on tobacco products further reinforce the impact of the textual health warnings. If *'a picture speaks a thousand words'* images can help tobacco users visualize the nature of tobacco-related diseases and convey health messages in a clearer way besides it is shown to help reducing the use of tobacco. According the GATS, Majority of cigarette smokers (71%), bidi smokers (62%) and users of smokeless tobacco (63%) noticed health warnings on packages of the respective products. Among those who noticed health warnings on packages, 38 percent of cigarette smokers, 29 percent of bidi smokers and 34 percent of smokeless tobacco users thought of quitting such products because of warning labels on the respective packages of tobacco products.

Pictorial health warnings are the most effective way of broadcasting health messages across wide spectrum of population. They detract from the glamour and appeal of tobacco product packages and help gaining public acceptance for other tobacco control measures such as establishing smoke-free environments. Besides, in a country like India, where one-third of the population is illiterate, pictorial health warnings communicate health messages effectively and influence the knowledge, attitude and perceptions about tobacco use. Rotation of images helps ensure that users and youth continue to notice the labels and react to their message.

2: Key definitions

Following are some of the important definitions, given under Section 3 of COTPA, relevant to implementing provisions related to pictorial health warnings:

“Indian language” means a language specified in the Eighth Schedule to the Constitution, and includes any dialect of such language;

“label” means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;

“package” includes a wrapper, box, carton, tin or other container;

“specified warning” means such warnings against the use of cigarettes or other tobacco products to be printed, painted or inscribed on packages of cigarettes or other tobacco products in such form and manner as may be prescribed by rules made under this Act;

“Principal display area” means:

- For box type packages, two equal sized largest surface area of the box that may be displayed or visible under normal or customary conditions of sale or use;

- For pouch type packages, the entire surface area of the pack that may be displayed or visible under normal conditions of sale or use;
- For conical or cylindrical type of packages, the entire curving area of the pack that may be displayed or visible under normal or customary conditions of sale or use;
- For any other form or type of package, the entire surface area of the pack that may be displayed or visible under normal or customary conditions of sale or use;

“Specified health warning” means, such health warnings as specified by the Central Government from time to time, in the schedule to the rules.

3: Provisions of the law

As per Section 7 of COTPA no person can produce, supply, distribute or import any tobacco product without the specified pictorial health warnings as notified by the Central Government from time to time. Rule notified on March 15, 2008 state that every person engaged directly or indirectly in the production, supply, import and distribution to tobacco products should ensure that their products bear the **Specified Health Warning**.³⁵ All tobacco product packages in India must have carried the new pictorial health warnings from April 1, 2013 as per the Ministry of Health and Family Welfare notification G.S.R. 724(E) dated 27th September, 2012 to be depicted on all tobacco product packs. Three sets of warnings are notified for smoking as well as smokeless forms of tobacco product packages.



- The health warning “Smoking Kills” (on smoking forms of tobacco products) and “Tobacco Kills” (on chewing and other forms of tobacco products) in white font colour and black colour background.
- The health warning is placed at the bottom and below the pictorial representation.
- **Pictorial representation of ill effects of tobacco use on health:** three pictograms for smoking and three pictograms for chewing or other smokeless forms of tobacco products have been notified. The Producers or the Manufacturer may choose any of the warnings for use on the smoking or smokeless tobacco product packs as the case may be.

(a) Area size and placement

- It shall cover 40% of the principal display area of the front panel (front side) of the tobacco product packs.
- It shall be legible and prominent and should be increased proportionally with the increase in the size of the package.
- It shall be positioned parallel to the top edge of the package and in the same direction as the other information on the package. For conical packs (such as bidis), the widest end of the pack will be considered as the top end of the pack.

- The specified warning shall be positioned in a manner that ensures that none of the elements of the warning are covered when the package is sealed or opened.
- The specified health warning shall appear on every tobacco products packaged for consumer use or retail sale.

(b) Language

- It shall be in the language used on the pack. If more than one language is used on the pack the specified health warning shall appear in two languages, one in which the brand name appears and the other in any other language used on the pack.

(c) Promotion of tobacco brand or use in general

- No messages to be displayed on the pack that directly or indirectly promote a specific tobacco brand or tobacco usage in general.

(d) False, misleading and deceptive information

- No tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions. This prohibition includes, but is not limited to, the use of: words or descriptors, whether or not part of the brand name, such as “light”, “ultra light”, “mild”, “ultra mild”, “low tar”, “slim” or similar words or descriptors; any graphics associated with, or likely or intended to be associated with, such words or descriptors; and any product package design characteristics, associated with, or likely or intended to be associated with, such descriptors.

(e) Obscuring, masking, altering or detracting from the specified health warnings

- No design or parts or accessories to cover or obscure the specified health warnings.
- No sale or supply of any product, device, or other thing that is intended to be used, or that can be used, to cover, obscure, mask, alter, or otherwise detract from the specified health warning.
- No warning to be masked/obscured or damaged in any way while opening the packs.
- No warning to be placed at the joints between two pouches or sachets packs.

4: Penalties under COTPA for violation of section 7, 8&9

Producer and manufacturer: Any person who produces or manufactures tobacco products which do not contain the specified warning, in case of first conviction, shall be punished with imprisonment for a term which may extend to two years, or a fine of up to Rs 5000, or both. If it is a second *or subsequent* conviction, he shall be punished with imprisonment for a term which may extend to five years and with a fine of up to Rs 10,000.

Distributor and retailers: Any person who sells or distributes tobacco products which do not contain the specified warning, on first conviction shall be punishable with imprisonment for a term which may extend to one year, or a fine of up to Rs 1000, or both. In case of second *or subsequent* conviction, he shall be punished with imprisonment for a term which may extend to two years and with a fine up to Rs 3000.

Offences by companies (S.26): If an offence is committed by a company, then the person in charge at the time when the offence was committed along with the company would be guilty of the offence and liable to punishment. However, if the person in charge proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence then that person would not be liable to any punishment.

Offences to be bail able (S.27): Notwithstanding anything contained in the Code of Criminal Procedure, 1973 all offences punishable under COTPA are bail able.

5: Enforcement officers

The enforcement officers are same as those authorized for action under Section 5 of COTPA. Central Government has notified the following officers vide Notification dated July 30, 2009 to ensure compliance with the provisions and regulations under Section 7 of COTPA. The authorized officers have power to Enter, Search and Seizure such packages as prescribed under Section 12 and 13 of COTPA.

S. No.	Designation	Department
1.	All officers of the level of Superintendent and above of the Customs and Central Excise	All Premises registered under Department of Revenue
2.	All officers of the rank of Inspectors and above of Sales Tax/Health/Transport	Department of Revenue/Health/ Transport of the State
3.	Junior Labour Commissioner and above	Labour Department
4.	Joint Director	Office of the Commissioner of Industries/Small Scale Industries
5.	Sub-Inspector and above of Police/State Food and Drug Administration or any other officer holding the equivalent rank of Sub-Inspector of Police.	Department of Food and Drugs and Department of Home Affairs.

District administration can also notify the District level enforcement squad to take action under all sections of COTPA including section 7 (*Annexure 11*). Other legislations also support Section 7 implementation (*Annexure 20*).

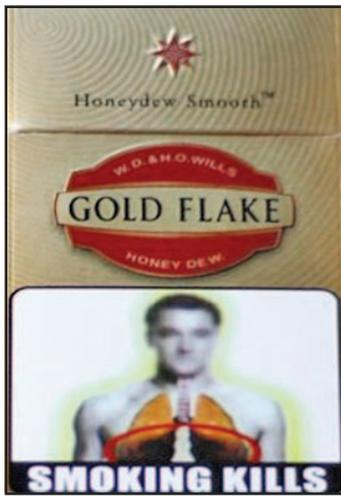
6: Key stakeholders for implementation of pictorial health warnings

- Department of Health, Home, Customs, Labour, Finance/Revenue, Transport, Industry and the specific officers notified under these departments (mentioned above) to ensure compliance with the law.
- NGOs and Consumer Organisations to make awareness about the law, report violations and demand compliance from the notified officers and department concerned.

7: Commonly observed violations:

Cigarette packs without any pictorial health warnings





Old pictorial health warning
Size: Warning size less than 40%
Misleading descriptor:
 'Honeydew smooth' is used on the package.



Old pictorial health warning
Size: Warning size less than 40%
Placement of warnings:
 Warning not displayed on the widest end of the *beedi* pack.



Old pictorial health warning
Size: Warning size less than 40%

8. Enforcement proceedings:

Any producer, manufacturer, seller, retailer, distributor and importer of tobacco products who fails to ensure that every tobacco product package produced, manufactured, sold, distributed and imported by him does not bear the specified health warning including a pictorial warning as prescribed by the rules mentioned above is said to have violated the law. In case the authorized officer has reason to believe that the provisions of Section 7, 8 & 9 are violated as above, the authorized officers may take following actions *suo moto* or on the basis of a complaint received:

- The authorized officers/flying squads shall have challan book, seizure memo and surety bond form with them while going for operation.
- The material /packets shall be seized, sealed and kept in possession.
- A complaint shall be made to the Hon'ble CJM court about the offence and the challan, seizure memo shall be attached with the complaint
- The law enforcers/authorized officers are same as Section 5 and also the procedure for the proceeding is same as for Section 5

Annexure-1: The Format of a Challan



Book No.

Serial No.....

The 'Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003'

1. **Name and Address of the accused person**
.....
.....
2. **Scene of the offence with date, time and place**
.....
3. **Particulars of offence under Act/ Rules**
.....
.....
4. **Where as you are hereby prosecuted for the offense described above, you are required to attend the court of(name & address of court) on(date) at (time) to answer the said charges unless otherwise ordered by the court.**

Signature/left thumb impression of the accused

Address and Signature of the witness:-

1.
2.

Signature of the Authorized Officer with seal

Annexure-2: The Format of a Receipt



GOVERNMENT OF KERALA

DEPARTMENT OF HEALTH AND FAMILY WELFARE

Receipt No.

Date

Received Rs.(in words).....

from Shri.....S/o.....

(Address).....

..... on account of
compounding fees for offence/ offences committed by him at (name of the place)

.....
under the provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and commerce , production , supply and Distribution) Act, 2003.

Signature of the offender

Signature of the Authorised Officer
with seal

Annexure-3: Guidelines for DSA/DSR

A. Guidelines for Designated Smoking Area or Space (DSA) under Section 4

Eligibility: Hotel or accommodation facilities having 30 or more room, restaurant or eateries having sitting capacity of thirty persons or more and airport

- Such area is distinctively marked as “Smoking Area” in English and the local language.
- The ‘smoking area’ should be a physically separated and surrounded by full height walls on all four sides.
- It should never be at the entrance or exit point.
- It should be fitted with an automatic closing door that is normally kept in a closed position.
- The air from the smoking area or space should be exhausted directly to the outside through use of appropriate air ventilation/cleaning system/exhaust fan.
- Such smoking area or space can be at each floor or wing in a multi-storied hotel or restaurants the case may be.
- **“Smoking Area” is used only for the purposes of smoking and no service(s) are allowed therein.**
- The designated smoking area or space can be certified by Department of Health, Tourism/Urban or Rural bodies for accommodation facilities; Health and FDA for eateries and airport authority of India (AAI) for airports

B. Guidelines for Designated Smoking Rooms (DSR) under Section 4

Eligibility: Hotel or accommodation facilities having 30 or more room

- The designated smoking rooms shall form the separate section in same wing or floor as the case may be. In case of more than one floor/wing, the rooms shall be in one floor/wing as the case may be.
- Such room distinctively marked as “Smoking Room” in English and the local language.
- The smoke from such rooms shall ventilate outside and doesn’t infiltrate into the non-smoking areas of the hotel including lobbies and corridors.

The designated smoking rooms (DSR) in a hotel or accommodation facilities can be certified by Department of Health, Tourism/Urban or Rural bodies.

Annexure-4: FAQs on Section 4 implementation

Q 1: Can enforcement official detain the violators?

Ans: Yes, under Section 25 (i) of COTPA, an enforcement official can detain the violators, if he is non-cooperative and refuses to disclose his identity and address. The authorized person will produce the violators before the nearest Magistrate for the trial.

Q 2: What, if a person refuses to pay?

Ans: There may be two reasons for refusal by the violators. First he may not be having the money at that time to compound the offence. In that case, ask and verify his name and complete address and hand over the challan to him and direct him to compound the same within seven days. Secondly, if the violator is not ready to disclose his identity; the authorised person can either detain the person and bring him before the nearest magistrate for trial or enquire the personal details of the violators from the person accompanying him or the owner of the premises and issue the challan on the postal address of the violators.

Q 3: What to do, if a violator flies away from the scene of offence?

Ans: In this case, try to enquire about the personal details from the in-charge/owner of the public place and issue the challan. If authorized person is not able to get any details; he may issue the challan in the name of “Anonymous” by describing the sex, probable age, physical appearance such as tall/medium/short, bearded or non-bearded/ dark coloured/fair or wheatish complexioned and style and colour of the clothing of the violators. The authorised person will describe the scene of the offence in details. The challan will be sent to the court before the Magistrate and he will direct the police to trace the violator.

Q 4: What, if the violator misbehaves with the enforcement officials?

Ans: If the violator misbehaves with the enforcement officials, the violator will now be charged with the obstruction in the duty. Now he will be tried under Section 186 of Indian Penal Code (<http://www.vakilno1.com/bareacts/indianpenalcode/S186.htm>). The violator can be detained and produced before the nearest Magistrate for trial. But if a violator is succeeded to run away and his identity is also not verified, in that case, the course of action as described in question no. 3 will be followed.

Q5: What if, the charge of violation against someone is proved incorrect in the court of law; whether the authorised person is penalized for issuing wrong challan?

Ans: Under Section 29 of COTPA, no legal proceeding shall lie against the authorised person for anything which is done in good faith.

Q6: What happens for repeated violators especially hotels? Etc.

Ans: The act of repeated violations by the in charge, owner or manager of premises such as hotels will be taken as abatement of offences. Section 107 of the IPC defines abatement as intentionally done act or illegal omission of the prohibited things. Repeatedly violating the section 4 of the smoke free rules will amount to the abatement of the offence. Section 109 and section 110 of IPC will provide the punishment for this. The violator of section 4 can also be booked by the police for the public nuisance under section 268 of IPC 1860 and punishable under 290 of IPC. It is worth mentioning that if any person repeats violation of public nuisance after injunction to discontinue, he is liable to punished under section 291 of IPC with a imprisonment for a term which may extend to six months, or with a fine or with both. The owner of the hotel can also be tried under The Consumer Protection Act 1986 and The Workmen’s compensation Act, 1923.

Annexure-5: Government of Kerala orders dated 31/5/2012 regarding notification of State Nodal officer and District Nodal officers



GOVERNMENT OF KERALA

Abstract

Health & Family Welfare Department - Control of use of Tobacco - Nominating state Nodal Officer and District level nodal officers to Co-ordinate Tobacco Control measures - Sanctioned - Orders issued.

Health & Family Welfare (G) Department
G.O.(MS)No. 155/2012/H&FWD Dated, Thiruvananthapuram, 31.05.2012

ORDER

In exercise of the powers in Section 25 of the Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce Production, Supply and Distribution) Act 2003 here in after the Act, and Rules made there under, the Government of Kerala are pleased to nominate Additional Director of Health Services (PH) Thiruvananthapuram as State Nodal Officer and Deputy District Medical Officers (NCD)(H) as district level nodal officers to coordinate Tobacco Control measures including effective enforcement of the Act. The Director of Health Services Office and concerned District Medical Offices will provide necessary administrative and infrastructure support to the Nodal Officers to perform their duty.

(By Order of the Governor)
RAJEEV SADANANDAN
PRINCIPAL SECRETARY

To

The Director, Government of India, Ministry of Health and Family Welfare , Nirman Bhavan, New Delhi-11
The Secretary, General Education Department.
The Secretary, Local Self Government Department.
The Director General of Police, Thiruvananthapuram.
The Director of Public Instructions, Thiruvananthapuram.
All District Collectors, Kerala.
Sri.K.Padmakumar, IG, Ernakulam Range.
The Director of Health Services , Thiruvananthapuram.
The Director of Medical Education, Thiruvananthapuram.

Annexure-6: Government's circular dated 22/9/2008 regarding effective implementation of Prohibition of smoking in Public Places rules, 2008 in state of Kerala

Secy: 37 3/4/2008 S LAKSHI GPM © Govt. of Kerala



GOVERNMENT OF KERALA

HEALTH AND FAMILY WELFARE (G) DEPARTMENT

CIRCULAR

No.35362/G1/08/H&FWD

Dated, Thiruvananthapuram, 22/9/2008

Sub: H&FWD - Prohibition of Smoking in Public Places Rules 2008 - Reg.-

Ref: D.O No.P-16015/20/2007-PH from the Joint Secretary, Ministry of H&FW, Government of India.

Ministry of Health & Family Welfare, Government of India reviewed the provisions in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 and notified a comprehensive rule viz: 'Prohibition of Smoking in Public Places Rules, 2008' on 30/5/2008, copy of which is enclosed herewith. As these rules are to take effect from 2nd October 2008, it is requested to give necessary directions to ensure effective implementation of the said rules urgently, in all the offices under you and report compliance.

A copy of the letter cited is also enclosed herewith for ready reference

**MATHEW JOSE.K.,
ADDITIONAL SECRETARY**

To

All Head of the Departments.

All Departments in the Secretariat including Law and Finance
Director, Information & Public Relations Department

Forwarded/By Order

K.S. Sudha

Section Officer

TOBACCO FREE PATHANAMTHITTA

പുകയില രഹിത പത്തനംതിട്ട പദ്ധതി

പുകയില നിയന്ത്രണ നിയമം 2003 പ്രകാരം ജില്ലയിൽ പുകവലി കർശനമായി നിരോധിച്ചിരിക്കുന്നു. വാഹനങ്ങൾ, പൊതുനിരത്തുകൾ, പട്ടണപ്രദേശങ്ങൾ, ബീച്ചുകൾ, മനോർ ഡ്രൈവ്, കടവുകൾ, ഹോട്ടലുകൾ, ഭക്ഷണശാലകൾ, മദ്യശാലകൾ, സിനിമാശാലകൾ, പാർക്കുകൾ, സ്റ്റേഡിയങ്ങൾ, ബസ് സ്റ്റാൻഡുകൾ, ടാക്സി സ്റ്റാൻഡുകൾ, വെയിറ്റിംഗ് ഷെഡുകൾ, കടകളും, കടകളുടെ ചുറ്റുമുള്ള പ്രദേശങ്ങളും, വ്യാപാര വ്യവസായ ശാലകൾ, പാർക്കിംഗ് സ്ഥലങ്ങൾ, തുടങ്ങി എല്ലാ പൊതുസ്ഥലങ്ങളിലും നിയമം ബാധകമാണ്. പൊതുസ്ഥലത്തെ പുകവലി, പിഴ ചുമത്തൽ അടക്കമുള്ള നിയമനടപടികൾ നേരിടേണ്ട കുറ്റകൃത്യമാണ്.

ജില്ലാ കളക്ടർ
പത്തനംതിട്ട

TOBACCO FREE PATHANAMTHITTA

As per the Tobacco Control Act 2003 smoking is strictly prohibited in all public places in the district including, Bars, Beaches, Parks, Marin Drive, Business and Industrial Establishment, Shops, Transport terminals, Taxi stands, Parking Areas, Waiting Sheds, Educational Institutions, Ports, Boat Jetties, Railway stations, Airport, Hotels, Shopping Malls, Hospitals, All govt. and private offices, High Court and other courts, public & private transport vehicles etc. Violation invites penalty and prosecution.

District Collector
Pathanamthitta

Annexure-8: Office order from
Collectorate Pathanamthitta for smoke
free public transport

സമീകരിക്കാവുന്ന

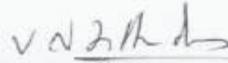
വിഷയം : പൊതു - സ്വകാര്യ വാഹനങ്ങളിൽ പുകയില നിരോധന നിയമം 2008 പ്രകാരം പുകവലിരഹിത ബോർഡുകൾ വയ്ക്കുന്നത് സംബന്ധിച്ച്

- സൂചന : (a) GO(RT) No:1479/12 Home Dated 17.05.2012 OF Home (G). Dept.
 (b)Circular No.A.1327/12 Commissioner of Food Safety Kerala Dated 29/05/2012.
 (c) Order No:A/1327/2012/Commissioner of Food Safety Dated 22.05.2012
 (d) Notification of MOH&FW Govt. of India on Section 6 COTPA.
 (e) Letter from Principal Secretary (Health) Thiruvanthapuram. Dated 16.06.2012
 (f).No.35362 /G 1/08/H &FWD, Letter from Additional Secretary Health Department. Dated 22/09/2008
 (g). No. P.H p 5/4272/10 Letter from Director of Health Dated 22/09/2008
 (h).Decision of District High Level Committee(Tobacco Control) conducted on 27th February 2012.

ഓരോ വർഷവും അനേക ലക്ഷം ആളുകളുടെ മരണത്തിന് കാരണമായ പൊതുസ്ഥലത്തെ പുകവലി, നിയമം മൂലം സർക്കാർ നിരോധിച്ചിട്ടുണ്ട്. പത്തനംതിട്ട ജില്ലാ ഭരണകൂടവും, ആരോഗ്യ, എക്സൈസ്, പോലീസ് വകുപ്പുകളും, വിവിധങ്ങളായ നടപടികളിലൂടെ പൊതുസ്ഥലത്തെ പുകവലി നിയന്ത്രിച്ചു കൊണ്ടിരിയ്ക്കുകയാണ്. ആയതിന്റെ ഭാഗമായി സന്നദ്ധ സംഘടനകളുമായി ചേർന്ന് 'പുകയില രഹിത പത്തനംതിട്ട' എന്ന പേരിൽ ഒരു പൊതുജന പങ്കാളിത്ത പുകയില നിയന്ത്രണ പരിപാടി ജില്ലയിൽ നടപ്പിലാക്കിക്കൊണ്ടിരിയ്ക്കുകയാണ്. 2008 ഒക്ടോബർ രണ്ടിന് നടപ്പിൽ വന്ന പൊതുസ്ഥലത്തെ പുകവലി നിരോധന നിയമപ്രകാരം പൊതുസ്ഥലത്തെ പുകവലി പിഴ ചുമത്തപ്പെടേണ്ട കുറ്റമാണ്. പുകവലിയ്ക്കുന്നവർ മാത്രമല്ല , പുകവലിയ്ക്കുന്നവരെ തടയുകയോ, നിയന്ത്രിക്കുകയോ ചെയ്യാത്ത പൊതുസ്ഥല മാനേജർമാരും, ഉടമസ്ഥരും, നടത്തിപ്പുകാരും കുറ്റക്കാരാണ്. നിയമം അനുസരിച്ച് പൊതു ഗതാഗത വാഹനങ്ങളായ, ടാക്സികൾ, ബസ്സുകൾ, ഓട്ടോറിക്ഷകൾ, മറ്റുവാഹനങ്ങൾ എന്നിവയും പൊതുനിരത്തിലെ സ്വകാര്യ വാഹനങ്ങളും പൊതുമേഖല - സ്വകാര്യ സ്ഥാപനങ്ങളുടെ വാഹനങ്ങൾ എന്നിവ പൊതുസ്ഥലത്തിന്റെ നിർവ്വചനത്തിൽ ഉൾപ്പെടുന്നതാണ്.

ആയതുകൊണ്ട് മേൽപ്പറഞ്ഞ വാഹനങ്ങളിൽ പുകവലി കർശനമായി നിരോധിച്ചിരിയ്ക്കുന്നു. നിരോധനം ലംഘിയ്ക്കുന്ന യാത്രക്കാരും, വാഹന നടത്തിപ്പുകാരും, ഉടമസ്ഥരും, വാഹനത്തിലെ പുകവലി തടയാത്ത നടത്തിപ്പുകാരും പുകയില നിരോധന നിയമം 2003 പ്രകാരം കുറ്റക്കാരാണ്. ആയതുകൊണ്ട് പിഴ ചുമത്തൽ ഉൾപ്പെടെയുള്ള കർശനമായ നിയമനടപടികൾ നേരിടേണ്ടി വരും.

കൂടാതെ മേൽപ്പറഞ്ഞ എല്ലാ വാഹനങ്ങളിലും പുകവലി നിരോധന ബോർഡുകളോ, സ്റ്റിക്കറുകളോ യാത്രക്കാർക്ക് കാണാവുന്നവിധം ഈ നോട്ടീസ് കിട്ടി 7 ദിവസത്തിനകം പതിപ്പിയ്ക്കേണ്ടതാണ്.


 ജില്ലാ കളക്ടർ
 പത്തനംതിട്ട

Annexure-9: Order from Department of Local Self Government (RD) to implement section 4 in D&O Licensed factories and Trade centers



GOVERNMENT OF KERALA

No.15885/RD3/2011/LSGD

Local Self Government (RD) Department
Thiruvananthapuram, Dated: 26/04/2011

CIRCULAR

Sub:- Local Self Government Department - Smoking in public places - Prohibition of directions of the Hon'ble High Court - Instructions to the Local Self Government Institutions - issued.

The Hon'ble High Court of Kerala in its judgment dated 12/07/1999 in OP No.24160/98, K. Ramakrishnan & another Vs.State of Kerala (AIR 1999 Ker.385) observed that smoking in public places will vitiate atmosphere so as to make it noxious to health of persons who happened to be there and therefore smoking in public place is an offence punishable under Section 278 IPC. The Court therefore declared and held as follows:

"(i) Public smoking of tobacco in any form whether in the form of cigarettes, cigars, beedies or otherwise is illegal, unconstitutional and violative of Article 21 of the Constitution of India. We direct the District Collectors of all the districts of the State of Kerala who are suo motu impleaded as Additional respondents 39 to 52 to promulgate an order under Section 133 (a) Cr.PC. prohibiting public smoking within one month from today and direct the 3rd respondent Director General of Police, Thiruvananthapuram, to issue instructions to his subordinates to take appropriate and immediate measures to prosecute all persons found smoking in public places treating the said act as satisfying the definition of "public nuisance" as defined under Section 268 IPC in the manner indicated in this judgment by filing a complaint before the competent Magistrate and direct all other respondents to take appropriate action by way of display of 'Smoking Prohibited' boards etc. in their respective offices or campuses.

(ii) There will be a further direction to Additional respondents 39 to 52 to issue appropriate directions to the respective RTOs to strictly enforce the provisions contained in Rule 227 (1) (d) and 227 (5) of the Kerala Motor Vehicles Rules, 1989.

(iii) Tobacco smoking in public places falls within the mischief of the penal provisions relating to "public nuisance" as contained in the Indian Penal Code and also the definition of "Air Pollution" as contained in the statutes dealing with the protection and preservation of the environment, in particular the Air (Prevention and Control of Pollution) Act, 1981.

The respondents, repositories of wide statutory powers and enjoined by the statutes and Rules to enforce the penal provisions therein are duty bound to require that the invidious practice of smoking in public places, a positive nuisance, is discouraged and offenders visited with prosecution and penalty as mandated by law. Accordingly the respondents are liable to be compelled by positive directions from the Court to act and to take measures to abate the nuisance of public smoking in accordance with law. Directions on the above lines are hereby issued.

(v) The continued omission and inaction on the part of the respondents to comply with the constitutional mandate to protect life and to recognize the inviolability of dignity of man and their refusal to countenance the baneful consequences of smoking on the public at large has resulted in extreme hardship and injury to the citizens and amounts to a negation of their constitutional guarantee of decent living as provided under Article 21 of the Constitution of India.

Subsequently Contempt Case C.C (C) No.1445/2010 was filed in the Hon'ble High Court complaining that in spite of the High Court Judgment in 1999 prohibiting smoking in public places, with direction to the District Collectors and the Police to ensure compliance with the direction in the judgment, all over Kerala still there are instances of smoking in public places in violation of the directions. In the judgment dated 22/11/2010, in the Contempt Case, the High Court observed that the judgment dated 12/07/1999 can be enforced completely, by bringing instances of violation to the notice of the Police for taking action of prosecution, failing which the petitioner in the Contempt Case can approach the higher authorities in Police for taking disciplinary action against Police Officers for their failure to comply with the judgment. The Contempt Case was disposed with direction to the Police Authorities

Annexure-9: continued....

to ensure that those who violate the judgment by smoking in public places are prosecuted. The Court further stated that if there is inaction on the part of the Police, it is for the petitioner or any person to bring it to the notice of higher authorities for initiating appropriate action including disciplinary proceedings.

In the light of the judgment dated 12/07/1999 and 22/11/2010, following instructions are issued to the Local Governments for immediate compliance.-

1. The Secretaries of the Local Governments Institutions will arrange to display 'SMOKING PROHIBITED' boards at public places, and at the premises of the offices under the control of the Local Governments, indicating in such boards that the prohibition is as per the order of the Hon'ble High Court.

2. The Secretaries of the Local Governments and the staff may bring to the notice of the local Police, any instance of smoking in public places, for taking action as per the directions of the High Court.

3. Since smoking in public places is a nuisance, as observed by the Hon'ble High Court, the Secretaries of the Local Governments themselves may take prosecution steps under Section 440 of the Kerala Municipality Act and/or Section 42 of TC Public Health Act or Section 44 of Madras Public Health Act, as the case may be.

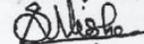
4. While granting the D&O Trade Licenses and the Factory Licences under the Kerala Municipality Act/ Kerala Panchayat Raj Act, the Local Governments shall insist a condition to the effect that the licencees shall not allow smoking in their premises and shall display 'No Smoking' boards in such premises.

5. Municipalities, Corporations and Village Panchayaths will undertake public awareness campaigns with the involvement of ayalkoottam/kudumbashree units, to discourage the habit of smoking, use of tobacco products and their sale

S.M.VIJAYANAND
Additional Chief Secretary (LSGD)

All Secretaries/Presidents of Grama Panchayats/Block Panchayats/
District Panchayats (through Director of Panchayats).
All Secretaries/Chairpersons of Municipalities/Municipal Corporations
(through Director of Urban Affairs)
All District Collectors
The Director of Panchayats, Thiruvannanthapuram
The Director of Urban Affairs, Thiruvannanthapuram
All Deputy Directors of Panchayats in all Districts
The Regional Joint Directors of Urban Affairs, Kollam/Kochi/Kozhikode
The Director General of Police, Thiruvannanthapuram
The Director, Information Kerala Mission (For publishing in website)
The Director of Information & Public Relations, Thiruvannanthapuram
PS to Minister (LSGD)
PA to Additional Chief Secretary (LSGD)
Stock file/Office copy.

Forwarded/ By Order



Section Officer

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S.M.VIJAYANAND
Additional Chief Secretary (LSGD)

PROCEEDINGS OF THE DISTRICT COLLECTOR, IDUKKI
(Present Sri. T.Bhaskaran IAS)

Order No.: E5 5337/09

Sub: Enforcement of Tobacco Control Law (The cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 (COTPA) and subsequent Enforcement Notifications from Central and State Governments in the District.

**Ref : (a) GO(RT) No:1479/12 Home Dated 17.05.2012 OF Home (G). Dept.
(b)Circular No.A.1327/12 Commissioner of Food Safety Kerala Dated 29/05/2012.
(c) Order No:A/1327/2012/Commissioner of Food Safety Dated 22.05.2012
(d) Notification of MOH&FW Govt. of India on Section 6 COTPA.
(e) Letter from Principal Secretary (Health) Thiruvanthapuram. Dated 16.06.2012
(f). No. 35362 /G 1/08/H &FWD, Letter from Additional Secretary Health Department. Dated 22/09/2008
(g). No. P.H p 5/4272/10 Letter from Director of Health Dated 22/09/2008
(h).Decision of District High Level Committee(Tobacco Control) conducted on 3rd October 2012.**

The high level meeting held on 3rd October 2012 under the chairmanship of District Collector has decided to strongly enforce the provisions of Section 4,5,6 and 7 of the Indian Tobacco Control Law in the District.

In pursuance of the decision a district level enforcement squad was constituted with Additional District Magistrate as the Chairman and following officials and persons as members.

1. Deputy DMO (District Nodal Officer on Tobacco Control)
2. Dy SP(Narcotic Cell)
3. Assi.Excise Commissioner
4. District Medical Officer.
5. Regional Transport Officer
6. Deputy Director Education
7. Deputy Director Panchayath

8. Health Officer Corporation/Municipality
9. District TB Officer
10. District Public Relation Officer
11. Drug Inspector
12. Designated Officer Food Safety.
13. Programme Officer, Kerala Voluntary Health Services (Lead NGO)

In their absence, the above mentioned officers will depute competent field officer (Not below the rank of Sub Inspector of Police) for detection of the offences and enforcement of the COTPA 2003.

District Collector could constitute Special squads for the enforcement of each section. Minimum 3 officials (1-13 mentioned in the district squad) and a civil society representative (13 mentioned in the district squad) will form the special squad.

Functions of the squad.

1. Monitor the violations of section 4, 5, 6 and 7 of Indian Tobacco Control Act (COTPA) 2003 and penalize violators and enforce other legal actions as authorized by the Act.
2. To ensure that no tobacco products are promoted in the district by way of advertisement, sponsorship, free sampling and any such other forms of promotions.
3. Take follow up actions on the violations reported to district administration and police.
4. Squads are directed to visit all the schools in the district and to enforce the law with all supports.

**District Collector
Idukki**

Copy to

1. Deputy DMO (District Nodal Officer on Tobacco Control)
2. Dy SP(Narcotic Cell)
3. Assi. Excise Commissioner
4. District Medical Officer.
5. Regional Transport Officer
6. Deputy Director Education
7. Deputy Director Panchayath
8. Health Officer Corporation/Municipality
9. District TB Officer
10. District Public Relation Officer
11. Drug Inspector
12. Designated Officer Food Safety.
13. Programme Officer, Kerala Voluntary Health Services (Lead NGO)



List of Major Violations of Section 4

- Smoking in Public places.
- Providing Lighting facilities for smoking
- Providing or Displaying Ash trays in Public Places where smoking is banned
- Non display of “No Smoking” signage in place where law declared as “Public Places”

List of Major Violations under Section 6

- Sale of Tobacco Product to Minors (below 18 years)
- Sale of Tobacco Product by Minor.(below 18 years)
- Sale of Tobacco Products within 400 mts of an educational institution.
- Non display on signage read as “Sale and use of tobacco products within 100 yards of this educational institution is banned “at Educational Institutions”.
- Non display on signage read as “Sale of Tobacco products to minors (below 18 years) is a punishable offence” at point of sale of tobacco products.

List of Major Violations under Section 5 COTPA.

- Unauthorized advertisement of Tobacco Products in Point of Sale or any public places including surrogate advertisement and display.
- Advertisement which directly or indirectly suggests or promotes to use or consumption of tobacco products
- Display of trade mark or brand name of cigarettes or any tobacco product to be promoted in exchange for sponsorship, gift, prize or scholarship.
 - Promotion of any tobacco product or its usage Violations of prescribed (size 45 x 60 cm) of advertisement board and its installations at places other than fronts of shops
 - Celluloid smoking as per prohibition of advertisement Rule 2004 Rule 6



Annexure-11: Other Acts and Rules that support implementation of smoke free rules

Sr. No.	Act/Rules	Can be assessed at
1.	The Constitution of India- Section 21	http://india.gov.in/govt/documents/hindi/partIII.pdf .
2.	The Public Nuisance Act under section 268 of IPC 1860	http://www.indiankanoon.org/doc/1569253/
3.	The Factories Act, 1948	http://pblabour.gov.in/pdf/acts_rules/factoriesact_1948.pdf
4.	The CCS(CCA) Rule, 1965	http://persmin.gov.in/EmployeesCorner/Acts_Rules/ccs(cca)/ccstotal1.htm
5.	The Consumer Protection Act 1986	http://ncdrc.nic.in/1_1.html

Annexure-12: Reporting Format for COTPA Violations

Monthly reporting format for COTPA violations/action taken

1. Name of the District /Block/Taluka:
2. Reporting period (dd/mm/yy): From...../...../..... To/...../.....

S. No.	Type of Section of COTPA	No. of Challans made	Fine collected (Rs)	Cases referred to the court (if any)
1.	Section 4			
2.	Section 5		N/A	
3.	Section 6(a)			
4.	Section 6(b)			
5.	Section 7		N/A	
	Total (all sections)			

Name/ signature of reporting officer
(with official seal)

Please Note: This report must be sent to the District Tobacco Control Cell (DTCC) Distt..... complete address, phone number/fax by.....(day) of every month. In case, if no challans are made and no fines are collected, it may be reported as nil, but timely reporting is must.



GOVERNMENT OF KERALA

Abstract



Home Department – Cigarettes and Other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) – Committees constituted - Orders issued.

HOME (G) DEPARTMENT

GO (RT). No. 1479/12/Home

Dated, Thiruvananthapuram, 17.05.2012

Read: - 1. Judgment dated 26.03.2012 in WP (C) No. 38513/2010 of Hon'ble High Court of Kerala

2. Lr. No. U4/2799/11 dated 26.04.2012 from the State Police Chief, Thiruvananthapuram.

ORDER

Tobacco and tobacco products are a curse to the society and the world has recognized it for long. Countries all over the world have been initiating various measures to curb this menace. India has also been in the forefront to fight this social evil. Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) contained various provisions to discourage the use of tobacco products. Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004; Prohibition on Sale of Cigarettes and Other around Educational Institutions Rules, 2004; and Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 have been in place to implement the provisions of the Act.

Kerala Voluntary Health Services, an NGO has approached the Hon'ble High Court of Kerala seeking positive directions for implementation of the statutory COTPA and the rules made thereunder. In the judgment read as (1) above, the Hon'ble High Court directed Government to strictly implement the provisions of Prohibition on Sale of Cigarettes and Other Tobacco Products around Education Institutions Rules, 2004 and to ensure that no tobacco products of whatever nature are sold within 100 yards measured radially starting from the outer limit of the boundary wall or fence or as the case may be of the educational institutions. Government was also directed to form committees at various levels for monitoring the implementation.

In order to implement COTPA and the rules made thereunder, Government are pleased to constitute the following committees in compliance of the judgment read (1) above.

I. School Protection Committee

- | | | | |
|-----|---------------------|---|-------------|
| i. | Head of Institution | - | Chairperson |
| ii. | PTA President | - | Member. |

- | | | | |
|------|-----------------------------------|---|---------|
| iii. | MPTA President | - | Member. |
| iv. | Teacher co-ordinator of PTA | - | Member. |
| v. | Station House Officer of the area | - | Member. |
| vi. | School Leader | - | Member. |

It shall be the duty of this committee to set the law in motion against the violators of the provisions of COTPA and its allied rules, on its own motion or on a complaint in that regard. The action as above shall be taken within fifteen days from the date of receipt of the information regarding the violation. The committee shall meet atleast once in a month. Student Police Cadets shall aid the committee wherever its units are functioning.

II. District Level Monitoring Committee

- | | | | |
|------|----------------------------|---|-------------|
| i. | District Collector | - | Chairperson |
| ii. | District Police Chief | - | Member |
| iii. | District Education Officer | - | Member |
| iv. | District Medical Officer | - | Member |

It shall be the duty of this committee to periodically supervise the functioning of the School Protection Committee in their district. If it is brought to the notice of the District Level Monitoring Committee that no action was taken against the violators by the School Protection Committee, the District Level Monitoring Committee can set the law in motion against the violators. The said committee can also recommend action against the authorities of the school which do not honour these directions. The District Level Monitoring Committee shall have the power to conduct surprise inspection of any school premises and the surroundings in their district to ensure that these directions are complied within letter and spirit. The Committee shall meet atleast once in three months. It shall be the endeavor of the District Level Monitoring Committee to sensitize the school children within their district about the evil effects of use of tobacco and allied products through seminars, campaigns and other effective methods. In this endeavor, the District Level Monitoring Committee shall seek the assistance of the Kerala State Legal Services Authority or the District Legal Services Authority.

III. State Level Monitoring Committee

- | | | | |
|------|-----------------------------------|---|-------------|
| i. | Secretary, Home Department | - | Chairperson |
| ii. | Secretary, Health Department | - | Member |
| iii. | Secretary, General Education Dept | - | Member |
| iv. | State Police Chief | - | Member |
| v. | Director of Public Instruction | - | Convenor |

This committee shall ensure the performance of the District Level Monitoring Committee by calling for periodical reports from the District Level Monitoring Committee. This committee shall meet atleast once in six months.

Annexure-13: continued....

that School Protection Committees are constituted in all schools of the State within one week of reopening of Schools in the ensuing academic year.

By order of the Governor.
SAJEN PETER
Principal Secretary to Government

To

The State Police Chief, Thiruvananthapuram.
The Accountant General (A & E/Audit), Kerala, Thiruvananthapuram.
The Advocate General, Ernakulam (with C/L)
The Secretary, Health and Family Welfare Department
The Secretary, General Education Department.
Director of Public Instruction
Director of Health Services.
The Director, Higher Secondary Education
The Director, Vocational Higher Secondary Education
The Director, Collegiate Education
The Registrar, Kerala/MG/Calicut/Kannur Universities
The Registrar, Cochin University of science and Technology, Kochi.
The Registrar, Sree Sankaracharya University of Sanskrit, Kalady.
The Registrar, Kerala Agriculture University, Vellanikkara.
Kerala Agriculture University P.O. – 680 656.
The Registrar, Kerala University of Health ^{Sciences} Services, Medical College P.O., Thrissur - 680596
The Registrar, Kerala Veterinary and Animal Sciences University, Pookkod, Wayanad.
The Registrar, University of Fisheries and Ocean Studies, Panagad, Kochi – 682 506.
The Registrar, National University of Advanced Legal Studies, Kinfra Hi-Tech Park.
HMT Colony P.O., Kalamassery, Ernakulam – 683 503.
All District Collectors
All District Police Chiefs
All District Medical Officers
All District Education Officers (Through DPI)
All schools (Through DPI)
General Education Department
Health & Family Welfare Department
Local Self Government Department
Higher Education Department
Home (PS& MS) Department
Agriculture Department.
Fisheries and Ports Department
Animal Husbandry Department
Information & Public Relations Department (for vide publicity)
SF/OC

Forwarded/By order,



Section Officer

Annexure-14: Format of a seizure memo

The Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution), Act-2003

In exercise of the powers delegated to me under Section 12 of above act (COTPA-2003), I hereby seize/detain the under mentioned tobacco products/tobacco advertisements/ materialWhich contravenes the provisions of Section 5/ Section 7 of COTPA-2003 at the premises of M/S.....
(Name and complete address).

S. No.	Date and time	Name/Descriptions of Product	No. of Units	Remarks

Name, address and Signatures of the witnesses:

- 1
- 2
- 3

Signature of vendor/dealer:

The products detained/seized have been duly sealed and left in the custody of Sh.....with the instruction not to temper with seals and not to dispose of the products till further order.

Name, Address and signatures of the witnesses:

Signature of vendor/dealer:

**Authorized officer
Address:**

Annexure-15: Format of a surety bond

Know all men by these present that we (1).....s/o.....(complete address (2).....s/o..... (complete address).....prop./partners/employees of M/S.....hereinafter called the vender /sellers and s/o..... (complete address) hereinafter called surety/sureties are held and firmly borne upto the President of India/ Governor of.....hereinafter called the government in the sum of..... rupees to be paid to the government, for which payment will and truly to be made.

We firmly bind ourselves jointly and severally by these presents.

Singed thisday of.....whereas Sh.....Authorized officer under COTPA-2003 has seized.....from..... (Place and time).

And whereas on the request of vendor(s) the government agreed to keep the said article in the safe custody of the vendor(s) executing a bond in the terms hereinafter contained and supported by sure/two sureties which vendor(s) has/have agreed to do.....Now the condition of the above written obligation in such that if of the vendor(s) failure to produce intact the said article before such court or authority and on such dates(s) as may be specified by the said Authorized officer under COTPA-2003 from time to time, the vendor(s) and/or the surety/sureties forthwith pay to the government on demand and without a demur sum of.....rupees the said bond will be void and of no effect, otherwise the same shall be and remain in full force and virtue.

These presents further witness as follows:-

1. The liability of the surety/sureties hereunder shall not be impaired or discharged by or any reason of time being granted by or any forbearance, act or omission of the government whether with or without the knowl- edge or consent of the sureties or either of the in respect of or in relation to all or any of the obligations or conditions to be performed or discharged by the vendor(s). Not shall it be necessary for the government to sue the vendor(s) before suing the sureties or either of them for the amount due, hereunder.
2. This bond is given under **The Cigarette and other Tobacco Products (Prohibition of Advertisement and Regu- lation of Trade and Commerce, Production, Supply and Distribution), Act 2003.**
3. The government shall bear the stamp duty payable on these presents.

In witness whereof these presents have been signed by the vendor(s) and the surety/sureties the day hereinabove mentioned and by Sh.....on behalf of the President of India on the date appearing below against his signature

Witness vendor(s)

For and on behalf of the President of India/Governor of.....

Name and designation

Annexure-16: Format of a Complaint

In the court of Hon'ble Chief Judicial Magistrate (.....)

State/District.complaint.through

Department of

v/s

1. Sh.....M/S....., Shop No.....(complete address)

2. M/S(Name and complete address) Though its Prop./partners

Complaint under section 5/7 of The Cigarettes and Other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production supply and Distribution Act 2003 (COTPA 2003)

Respectfully submitted that:-

1. That I is duly appointed/authorized asin the Department ofunder **The Cigarettes and Other Tobacco products(Prohibition of Advertisement and Regulation of Trade and Commerce, Production supply and Distribution Act 2003**by order nodated.....

2. That, I inspected the shop ofM/S(complete address) on..... (date) at about(time) and found that Sh.....M/S(complete address) has displayed the tobacco advertisement/is selling the tobacco products without specified warnings or.....(complete description of the violation)

3. That 1. Sh..... (Name and designation) 2. Sh. (Name and designation) 3. Sh..... (Name and designation).....were present throughout the whole process inspection and witnessed the whole process.

4. That challan were prepared on the spot, which were signed by the accused, as well as witnesses..

5. That I am a Govt. Servant and is required to perform several duties as such I will not be able to attend the Hon'ble court on all the dates of hearing of the complaint, therefore it is prayed that personal presence of the complainant on all the dates of hearing may kindly be exempted under section 249 of Cr. PC.

6. That accused Sh.....M/S (Name and complete address) had displayed an advertisement board of tobacco product on his shop /is selling tobacco products without specified warnings which is prohibited under Section 5/7 of COTPA 2003 which is punishable under Section 20/22 of COTPA 2003. M/S (Name and complete address) though its Prop./partners/ is also liable under the act . It is therefore prayed that the accused person(s) be summoned and dealt in accordance with law.

Authorized officer

List of witnesses with address:

- 1.
- 2.
- 3.

List of documents attached:

- 1. Challan form
- 2. Seizure memo
- 3. Photograph

Authorized officer

Annexure-17: Other legislations that support Section 5 implementation

1. Indian Penal Code see: <http://www.vakilno1.com/bareacts/indianpenalcode/indianpenalcode.htm>
2. Cr.PC available at www.vakilno1.com/bareacts/crpc/Criminal-Procedure-Code-1973.htm
3. COTPA-2003 available at <http://mohfw.nic.in/WriteReadData/l892s/file9-61090433.pdf>
4. Cinematograph Act, 1952 which can be accessed at www.vakilno1.com/bareacts/cinematograph/cinematographact.htm
5. Cable Television Networks (Regulation) Act, 1995 which can be accessed at www.indiancabletv.net/catvact.htm
6. Advertising codes for broadcasting [www.cscsarchive.org:8081/MediaArchive/essays.nsf/\(docid\)/8FFBA21211D70AEE65256B0B001E6C2C](http://www.cscsarchive.org:8081/MediaArchive/essays.nsf/(docid)/8FFBA21211D70AEE65256B0B001E6C2C)
7. Advertising Standards Council of India can be accessed at www.ascionline.org/index.php/asci-about/76-cat-about-asci-regulations/asci-codeofconduct
8. The Broadcasting services Regulation Bill, 2007 which can be accessed at www.prindia.org/uploads/media/vikas_doc/docs/1241499927~~Broadcasting_Services_Regulation_Bill_2007.pdf
9. Consumer Protection Act 1986 which can be accessed at http://ncdr.nic.in/1_1.htmlhttp://ncdr.nic.in/1_1.html
10. Standards of Weights and Measures (Packaged Commodities) Rules, 1977 relating to Deceptive packages; Section 27 and 28 <http://fcamin.nic.in/Events/EventDetails.asp?EventId=1721&Section=Weight+and+Measures&ParentID=0&Parent=1&check=0>

സ്വീകർത്താവ്

Annexure-18: Office order from Collectorate Pathanamthitta for enforcement of Section 6(a)

വിഷയം : പുകയില നിരോധന നിയമം 2003 പ്രകാരം പുകയില ഉത്പന്നങ്ങൾ വിൽക്കുന്ന കടകളിൽ 18 വയസ്സിൽ താഴെയുള്ള കുട്ടികൾക്ക് പുകയില വിൽക്കുന്നത് ഇന്ത്യൻ പുകയില നിയമം അനുസരിച്ച് പിഴ ചുമത്താവുന്ന കുറ്റം ആണ് എന്ന് അറിയിയ്ക്കുന്ന ബോർഡ് വയ്ക്കുന്നത് സംബന്ധിച്ച്

സൂചന : a. പുകയില നിയന്ത്രണ നിയമം 2003 ഉം തുടർന്നുള്ള നടപ്പാക്കൽ സംബന്ധമായ ഗസറ്റ് വിജ്ഞാപനങ്ങളും
b. 27/02/2012 - ൽ കൂടിയ പുകയില രഹിത പത്തനംതിട്ട പദ്ധതി ഉന്നതതലയോഗ തീരുമാനം

ഓരോ വർഷവും അനേക ലക്ഷം ആളുകളുടെ മരണത്തിന് കാരണമായ പൊതുസ്ഥലത്തെ പുകവലി, നിയമം മൂലം സർക്കാർ നിരോധിച്ചിട്ടുണ്ട്. പത്തനംതിട്ട ജില്ലാ ഭരണകൂടവും, ആരോഗ്യ, എക്സൈസ്, പോലീസ്, വകുപ്പുകളും, വിവിധങ്ങളായ നടപടികളിലൂടെ പൊതുസ്ഥലത്തെ പുകവലി നിയന്ത്രിച്ചു കൊണ്ടിരിക്കുകയാണ്. ആയതിന്റെ ഭാഗമായി സന്നദ്ധ സംഘടനകളുമായി ചേർന്ന് 'പുകയില രഹിത പത്തനംതിട്ട' എന്ന പേരിൽ ഒരു പൊതുജന പങ്കാളിത്ത പുകയില നിയന്ത്രണ പരിപാടി ജില്ലയിൽ നടപ്പിലാക്കിക്കൊണ്ടിരിക്കുകയാണ്. പുകയില നിയന്ത്രണ നിയമം 2003 - സെക്ഷൻ 6-2 അനുസരിച്ച് 18 വയസ്സിൽ താഴെയുള്ള കുട്ടികൾക്ക് പുകയില ഉത്പന്നങ്ങൾ വിൽക്കുന്നത് പിഴ ചുമത്തുന്ന കുറ്റകൃത്യമാണ്. കൂടാതെ പുകയില വിൽക്കുന്ന കടകളിൽ എല്ലാം 18 വയസ്സിൽ താഴെയുള്ള കുട്ടികൾക്ക് പുകയില വിൽക്കുന്നത് ഇന്ത്യൻ പുകയില നിയമം അനുസരിച്ച് പിഴ ചുമത്താവുന്ന കുറ്റം ആണ് എന്ന് അറിയിക്കുന്ന ബോർഡ് എല്ലാവർക്കും കാണാവുന്ന വിധം പ്രദർശിപ്പിക്കേണ്ടതാണ്. ഇപ്രകാരം ബോർഡു വയ്ക്കാത്ത കടകൾക്ക് പുകയില ഉത്പന്നങ്ങൾ വിൽക്കാൻ അവകാശമില്ല. ഇപ്രകാരമുള്ള കടകൾ ശ്രദ്ധയിൽപ്പെട്ടാൽ നിയമ നടപടി സ്വീകരിയ്ക്കുവാൻ പോലീസിനും ആരോഗ്യവകുപ്പിനും അധികാരം നൽകിയിട്ടുണ്ട്. കൂടാതെ 18 വയസ്സിൽ താഴെയുള്ള കുട്ടികൾക്ക് പുകയില ഉത്പന്നങ്ങൾ വിൽക്കുന്നതായി ശ്രദ്ധയിൽപ്പെട്ടാൽ പുകയില നിരോധന നിയമം അനുശാസിയ്ക്കുന്ന വിധം നിയമനടപടി സ്വീകരിക്കുന്നതാണ്.

Annexure-19: Order from Director Health Services to enforce section 6(b) COTPA in the State

നമ്പർ: ഹി.എച്ച്.-8/4272/10/ആ.വ.സ.പ.

ആരോഗ്യവകുപ്പ് ഡയറക്ടറുടെ കാര്യാലയം
തിരുവനന്തപുരം തീയതി: 22/4/2010.

പ്രേഷിതൻ

ആരോഗ്യവകുപ്പ് ഡയറക്ടർ

സ്വീകർത്താവ്

ജില്ലാ മെഡിക്കൽ ഓഫീസർ(ആരോഗ്യം)
തിരുവനന്തപുരം/കൊല്ലം/പാലക്കാട്/കേരളം/ആലപ്പുഴ/
എറണാകുളം/കണ്ണൂർ/ഇടുക്കി/കോഴിക്കോട്/കണ്യാശ്ശേരി/
പാലക്കാട്/മലപ്പുറം/വയനാട്/തൃശ്ശൂർ.

സർ,

വിഷയം: **ഭൂമിയിലെ ഉൽപ്പന്നങ്ങളുടെയും സിഗരറ്റുകളുടെയും
നിരവഹിതവുമായ വിൽപന സംബന്ധിച്ച്
സ്വപന സർക്കാർ കത്ത് നമ്പർ: 3188/ജി/2010/എച്ച് & എഫ് ഡബ്ല്യു.സി
തീയതി: 22/2/10.**

വിദ്യാഭ്യാസ സ്ഥാപനങ്ങളുടെ 10 അടി ചുറ്റളവിൽ പുകയില അടങ്ങിയ ഉൽപ്പന്നങ്ങൾ വിൽക്കുന്നത് നിരവഹിതവുമായ വിൽപന എന്നീ നിബന്ധനകളും ഇപ്പോഴും വിൽപന തുടരുന്ന എന്ന് ഓരോരോടതിയുടെ പ്രദേശത്ത് കൊണ്ടു വന്നിരിക്കുന്നു എന്ന് മേൽ സ്വപന പ്രകാരം സർക്കാർ അറിയിച്ചിരിക്കുന്നു. വിദ്യാഭ്യാസ സ്ഥാപനങ്ങളുടെ 10 അടി ചുറ്റളവിൽ പുകയില പുകയില ഉൽപ്പന്നങ്ങൾ വിൽക്കുന്നതും അതു പോലെ തന്നെ 18 വയസ്സിനു താഴെയുള്ളവർക്ക് എല്ലാവിധ പുകയില ഉൽപ്പന്നങ്ങൾ വിൽക്കുന്നതും കർശനമായി നിരോധിച്ചിട്ടുണ്ട്. ഇവ പുകയ്ക്കുന്നവർക്ക് എല്ലാ വിദ്യാഭ്യാസ സ്ഥാപനങ്ങൾക്കു മുൻപിലും പ്രദർശിപ്പിക്കുന്നവർ അധികൃതരെ അറിയിക്കുവാനായി ജില്ലാ മെഡിക്കൽ ഓഫീസർമാരെ ചുമതലപ്പെടുത്തിയിരിക്കുന്നു. ഇവ നടപ്പിൽ വരുത്തുവാനായി പോലീസ് വകുപ്പിന്റെയും ത്രിതല പഞ്ചായത്തുകളുടെയും സഹായം ആവശ്യപ്പെടാവുന്നതാണ്.

വിശ്വസ്തതയോടെ,

ആരോഗ്യവകുപ്പ് ഡയറക്ടർക്കു വേണ്ടി

അർപ്പണം

Annexure-20: Other Acts and Rules that support implementation of pictorial health warnings

1. Consumer Protection Act to inform the customers about the contents and ill effects of tobacco use.
2. Food Safety and Standards Act to ensure appropriate labels and safety of the consumers.
3. Poison Act, Drugs and Cosmetics Act and the Insecticides Act to label nicotine and other poisonous substances in tobacco.
4. Shops and Establishments Act to mandate compliance with Section 7 as a license issue/renewal condition.
5. Municipal and Panchayat Bylaws and Regulations to mandate compliance with Section 7 as a license issue/renewal condition.

Annexure-21: Additional resources for implementation of various sections of COTPA

Section 4:

1. The Cigarette and other Tobacco Product (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 can be downloaded at <http://mohfw.nic.in/WriteReadData/l892s/file9-61090433.pdf>
2. Prohibition of Smoking in Public Places Rules-2008 which can be downloaded from <http://mohfw.nic.in/WriteReadData/l892s/file26-13144281.pdf>
3. Prohibition of Smoking in Public Places (Amendment) Rules-2009 downloadable at <http://www.aftcindia.org/pdf/32.pdf>
4. Indian experience with tobacco cessation: List of tobacco cessation centres in India can be downloaded from http://www.whoindia.org/LinkFiles/Tobacco_Free_Initiative_03-Chapter-06.7.pdf

Section 5:

1. Centre for Media Studies and Health bridge (2009) Tobacco Advertising, Promotion, and Sponsorship across South East Asia – Challenges and Opportunities, Mumbai, August 2009.

Section 6:

1. Copy of the COTPA and the rules notified related to section 6 including
 - GSR 137(E) dated February 25, 2004
 - GSR 417(E) dated May 30, 2008
 - GSR 680(E) dated September 15, 2009
 - GSR 561(E) dated September 1, 2004
 - GSR 687(E) dated September 18, 2009
 - G.S.R. 619(E) dated August 11, 2011Can be downloaded at <http://mohfw.nic.in/index1.php?lang=1&level=2&sublinkid=671&lid=662>
2. Tobacco Free Educational Institution Guideline issued by Ministry of Human Resource Department, GOI (also circulated by CBSE)

Section 7:

1. COTPA available at [http://whoindia.org/LinkFiles/Tobacco_Free_Initiative_Compilation_of_Tobacco_Control_laws,_rules_and_notifications_\(Pdf\).pdf](http://whoindia.org/LinkFiles/Tobacco_Free_Initiative_Compilation_of_Tobacco_Control_laws,_rules_and_notifications_(Pdf).pdf)
2. Rules of March 2008, 2010 and 2011 available at <http://mohfw.nic.in/index1.php?lang=1&level=2&sublinkid=671&lid=662>
3. HRIDAY Factsheet available at <http://www.hriday-shan.org/hriday/COMPILED%20FACTSHEET%20ON%20TC%20ISSUES.pdf>
4. PHFI Factsheet on pack warnings

References

1. U.S. Department of Health and Human Services. How tobacco smoke causes disease: the biology and behavioral basis for smoking-attributable disease: a report of the Surgeon General. Rockville, MD: Dept. of Health and Human Services, Public Health Service, Office of Surgeon General, 2010.
2. The World Bank Group. 1999. *Economics of tobacco control*. Available online at: www1.worldbank.org/tobacco/presentation.asp
3. Government of India and International Institute for Population Sciences (2010): Ministry of Health and Family Welfare. Global Adult Tobacco Survey: India Report.
4. World Health Organization and International Agency for Research on Cancer. Evaluating the Effectiveness of Smoke-free Policies. IARC Handbook of Cancer Prevention. Lyon: WHO IARC, 2009.
5. Oberg M, Jaakkola MS, Woodward A, Peruga A, Pruss-Ustun A. Worldwide burden of disease from exposure to second-hand smoke: a retrospective analysis of data from 192 countries. *Lancet* 2010.
6. www.Secondhandsmokekills.in and <http://smokefreedelhi.org/signage-resources.php>
7. Notification no. GSR 417 (E) dated 30 May 2008. Prohibition of smoking in public places rules 2008 <http://mohfw.nic.in/WriteReadData/l892s/file26-13144281.pdf>
8. Notification GSR 417 (E) dated 30 May 2008, and GSR 680 (E), 15 September 2009
9. http://tobaccofreecenter.org/files/pdfs/en/smoke_free_compliance_guide.pdf
10. National Cancer Institute (US Department of Health and Human Services, National Institutes of Health, 2008, "The Role of the Media in Promoting and Reducing Tobacco Use", Monograph No. 19
11. WHO Report on the Global Tobacco Epidemic, 2008: The MPOWER package. Geneva: World Health Organization; 2008. p 37.
12. Arora, M., Reddy, K. S., Stigler, M & Perry, C L. 2008. Associations between tobacco marketing and use among urban youth in India. *Am J Health Behav*, 32, 283-94.
13. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Rules, 2005. G.S.R. 345(E) dated 31st May, 2005 , Ministry of Health and Family Welfare, GOI
14. As per notification dated 30th July 2009
15. Section 12 of COTPA
16. Section 27of COTPA
17. Section 22 of COTPA
18. GSR 345 (E) dated May 31, 2005
19. G.S.R 708 (E) dated Sept.21, 2012
20. Notification dated 30.7.2009

21. Powers and punishments given by different Courts under sessions court:
 - o Sessions court: Life imprisonment and below, no death penalty and fine.
 - o Assistant Sessions Judge: Up to 10 years and fine.
 - o Chief Metropolitan magistrate: Up to 7 years and fine.
 - o Chief Judicial Magistrate: Up to 7 years and fine.
 - o Sub Divisional Judicial Magistrate: Up to 3 years and Rs. 10,000 fine.
 - o Judicial Magistrate of First Class (Taluka level): Up to 3 years and Rs.10,000 fine.
 - o Judicial Magistrate of Second Class (Taluka level): Up to 1 year and Rs.5,000 fine.
 - o Metropolitan magistrate: Up to 3 years and Rs. 10,000 fine.
 - o Special Metropolitan magistrate: Up to 3 years and Rs. 10,000 fine.
22. Global Adult Tobacco Survey Report 2010
23. Indian J Pediatr 1999; 66 : 817-824
24. Juvenile Justice (Care and Protection of Children) Act, 2000
25. Cigarette and other tobacco products Amendment Rules, 2011
26. Cigarette and other tobacco products (display of Board's by Educational institutions) Rules, 2009
27. Cigarette and other tobacco products Amendment Rules, 2011
28. www.cbse.nic.in/circulars/cir18-2009.doc
29. http://whoindia.org/LinkFiles/Tobacco_Free_Initiative_A_Guide_for_Teachers_-_Tobacco_Control_.pdf
30. http://www.whoindia.org/LinkFiles/NMH_Resources_Health_Policy_for_schools.pdf
31. www.cbse.nic.in/circulars/cir18-2009.doc
32. D. Hammond, G T. Fong, et al. "Impact of the graphic Canadian warning labels on adult smoking behaviour." *Tobacco Control*. Vol. 12, No. 4 (December 2003), p. 391-395.
33. R. Nathan. *Model Legislation for Tobacco Control: A Policy Development and Legislative Drafting Manual*. (Paris: International Union for Health Promotion and Education, 2004).
34. Hammond D, Fong GT, McNeill A, Borland R, and Cummings KM. Effectiveness of cigarette warning labels in informing smokers about the risks of smoking: findings from the International Tobacco Control (ITC) Four Country Survey. *Tobacco Control*. 2006; 15(suppl_3):iii19-iii25.
35. Display of the specified health warning exactly as prescribed in the CD issued by the Ministry of Health and Family Welfare along with the notification (reproduced below). The actual CDs may be procured from Under Secretary, Ministry of Health and Family Welfare, Room No. 425, C-Wing, Nirman Bhawan, New Delhi 110108 Phone no. 011-23012735 and is also available at the Ministry's website www.mohfw.nic.in

Disclaimer

This document is not a legal document but it serves as a ready reckoner for district and sub-district law enforcers on section 4 & 6. However, it is recommended that COTPA-2003 and subsequent notifications may be referred to whenever needed



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