

No. 13 of 2023.

*Smoking (Designated Areas)
Act, 2023.*

Saint Christopher
and Nevis.



I assent,

MARCELLA LIBURD

Governor-General

21st June, 2023.

SAINT CHRISTOPHER AND NEVIS

No. 13 of 2023

AN ACT to designate certain specified public places as smoking areas, to prohibit smoking outside of a designated area in public places, to better provide for protection from the exposure to certain types of smoke and for related or incidental matters.

[Published 21st June 2023, Extra Ordinary Gazette No. 35 of 2023.]

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

1. Short title.

This Act may be cited as the Smoking (Designated Areas) Act, 2023.

2. Interpretation.

In this Act,

“Chief Medical Officer” means the Chief Medical Officer appointed in accordance with the provisions of the Public Health Act, Cap. 9.21;

“Environmental Health Officer” means an environmental health officer appointed in accordance with the provisions of the Public Health Act, Cap. 9.21.

“Minister” means the Minister responsible for Health;

“public place” includes an indoor or outdoor area, whether privately or publicly owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not, including but not limited to—

- (a) all commercial, agricultural and industrial zoned lands and properties;
- (b) bars, drinking places, restaurants and clubs;
- (c) tourist establishments, hotels and guesthouses;
- (d) schools and all other educational institutions;
- (e) hospitals whether publicly or privately operated;

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- (f) churches or other religious establishments except as is permitted under the Act or any other law;
- (g) correctional facilities whether publicly or privately operated;
- (h) public transportation;
- (i) community centres;
- (j) roads, highways and thoroughfares;
- (k) Government offices; and
- (l) other places or buildings of all types, accessible to the public;

“smoke” or “smoking” means to inhale, exhale, burn, combust or vaporise any lighted or heated device or pipe, or any other lighted or heated cannabis or cannabis resin intended for inhalation, whether natural or synthetic, in any manner or in any form and includes the use of an electronic smoking device that creates an aerosol or vapour, in any manner or in any form, or the use of any orally used device for the purpose of circumventing the prohibition of smoking;

“smoking device” means any lighted or heated device or pipe intended for inhalation, whether natural or synthetic, in any manner or in any form and includes an electronic smoking device that creates an aerosol or vapour, in any manner or in any form, or any orally used device for the purpose of circumventing the prohibition of smoking.

3. Smoking prohibited in public places.

- (1) Subject to section 4, a person shall not smoke in a public place.
- (2) A person who contravenes subsection (1) shall—
 - (a) be allowed to retain possession of the smoking device; and
 - (b) be issued with—
 - (i) a fixed penalty notice for five hundred dollars; or
 - (ii) in default of payment, shall be liable to perform up to twenty hours of community service; or
 - (iii) in default of performing twenty hours of community service, to imprisonment for five days.

4. Designated smoking areas.

- (1) Any person, partnership, director of a company or lawful entity may apply to the Chief Medical Officer for a licence declaring a designated smoking area—
 - (a) in any public place in which that applicant operates a business; or
 - (b) for a particular event or series of events in a public place.
- (2) An application for a licence pursuant to subsection (1) shall be made in the form set out in Part I of the Schedule.

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(3) The fee payable for an application with respect to a business shall be two hundred dollars.

(4) The fee payable for an application with respect to an event or series of events shall be one hundred dollars.

(5) A licence issued pursuant to this section shall be—

- (a) ~~with respect to a business, valid until the 31st day of December in the year in which it was issued;~~
- (b) with respect to an event or series of events, valid until the last day of that event or series of events;
- (c) recorded in a register of licences kept by the Ministry; and
- (d) evidenced by the issuance of a licence document, which shall include—
 - (i) the name of the licensee;
 - (ii) the address of the premises in which there is a designated smoking area;
 - (iii) a detailed description of the designated smoking area;
 - (iv) an alphanumeric identification number that is unique to the licensee; and
 - (v) the date of issuance and expiration date of the licence.

(6) The Chief Medical Officer, after consultation with the Chief Fire Officer, shall inform any successful applicant of any mandatory fire safety and other public health and safety requirements before issuing a licence pursuant to subsection (1).

(7) For the purposes of subsection (1), different requirements may be prescribed or set out in the licence in relation to different types of premises including indoor spaces or outdoor spaces.

5. Renewal of licence.

A licence with respect to a business is valid from the date of first issue to the 31st day of December of the following year and is renewable every two years by the Chief Medical Officer, upon a new application made pursuant to section 4 and on payment of the prescribed fee on or before the 15th day of January.

6. Licence not transferable.

A licence issued pursuant to this Act to any person shall not be transferable to any other person.

7. Revocation or suspension of licence.

(1) The Chief Medical Officer may revoke or suspend a licence issued pursuant to section 4 if he or she is satisfied that the licensee has—

- (a) provided false information or misrepresented any information contained, or otherwise used fraud or deceit, in his or her application made pursuant to subsection (1);
- (b) fails to comply with the terms and conditions of the licence;

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- (c) is in breach of any of the provisions of this Act which is applicable thereto;
 - (d) ceases to operate the licenced premises in Saint Christopher and Nevis for a period in excess of 6 months;
 - (e) is conducting its affairs in a manner detrimental to the public interest or to the interest of its customers;
 - (f) been convicted of a criminal offence punishable by fine or imprisonment under any law;
 - (g) been issued three or more tickets for allowing smoking in a public area not designated for smoking;
 - (h) having reviewed a report in writing from the police, defence force or any official of the Ministry responsible for social services, he or she is satisfied that the licensee has willfully or negligently exposed, or provided access to, a minor to a designated smoking area;
 - (i) been diagnosed by a licenced medical doctor with a mental illness;
 - (j) received medical treatment for substance abuse; or
 - (k) by reason of any other circumstances, is no longer a fit and proper person to hold a licence.
- (2) Before revoking a licence under subsection (1), the Chief Medical Officer shall—
- (a) give the licensee notice, in writing, of his or her intention to do so;
 - (b) specify in the notice the grounds upon which he or she proposes to make the revocation;
 - (c) request that the licensee submit to him or her within a specified period, being not less than thirty days, a statement of objections to the making of the revocation if the licensee objects;
 - (d) give a licensee with an objection an opportunity to be heard; and
 - (e) thereafter, advise the licensee of his or her final decision.
- (3) Notice under subsection (2) shall be served at the licensee's business premises, address contained in his or her application; or his or her last known address.
- (4) If any licensee is aggrieved by any decision made under subsection (1), that licensee may appeal to the High Court within fourteen days of such decision, setting out the grounds of such appeal.
- (5) Where a licence has been revoked, the Chief Medical Officer shall, as soon as possible thereafter cause a notice of the revocation to be published in the official Gazette.
- (6) The Chief Medical Officer shall terminate a licence at the written request of the licensee.

8. Each place of business chargeable.

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Where different premises are kept in the name of one person or company, a separate licence shall be taken out in respect of each of the premises where smoking is permitted.

9. Powers of entry.

For the purpose of verifying the correctness of any information furnished by any person operating licensed premises or for the purpose of securing compliance with the provisions of this Act or any regulations made hereunder, the Chief Medical Officer, the Chief Fire Officer, an Environmental Health Officer or a Police Officer may enter any premises used by such person for the purpose of his or her business or event.

10. Display of licence and signage.

- (1) A licensee shall clearly display a copy of the licence on the premises.
- (2) A designated smoking area shall be clearly identified by proper signage, as follows—
 - (a) the signage must be clearly legible;
 - (b) the signage must clearly demarcate the location and boundaries of the designated smoking area;
 - (c) the signage must be displayed in such numbers and with such prominence that they are likely to be seen by a person at the entrance to the designated smoking area or within that area;
 - (d) the signage must contain—
 - (i) the words “DESIGNATED SMOKING AREA” in letters of at least three inches in height; and
 - (ii) the words “Smoking has proven health risks”; and
 - (iii) a reference to the name of the Act.
- (3) All public entrances to the business place or event for which a licence is issued pursuant to section 4(1) shall be clearly identified by proper signage, as follows—
 - (a) the signage must be clearly legible;
 - (b) the signage must be displayed in such numbers and with such prominence that they are likely to be seen by a person at the public entrances to the business or event, or within, that area;
 - (c) the signage must contain—
 - (i) the smoking prohibited symbol (or an equivalent symbol) with a diameter of at least five inches;
 - (ii) the words “NO SMOKING OR VAPING ALLOWED EXCEPT IN THE DESIGNATED SMOKING AREA” in letters of at least three inches in height;
 - (iii) the words “It is against the Law to smoke in public unless in a Designated Smoking Area. Penalties may apply.”; and

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(iv) a reference to the name of the Act.

11. Occupier responsibilities.

(1) A licensee and any person under his, her or its direction or control shall not permit any person to smoke except in a designated smoking area and otherwise in accordance with, the terms and conditions of a licence issued by the Chief Medical Officer.

(2) If a smoke-free area forms a part of public place in which smoking is elsewhere allowed by licence issued pursuant to section 4, the licensee and any person under his, her or its direction or control must take reasonable steps to prevent smoke caused by smoking in the designated smoking area from penetrating the smoke-free area.

12. Offences.

(1) A person who contravenes any provision of this Act or any regulation made thereunder shall be issued with—

- (a) a fixed penalty notice for one thousand dollars; or
- (b) in default of payment, shall be liable to perform up to twenty hours of community service; or
- (c) in default of performing twenty hours of community service, to imprisonment for five days.

13. Fixed penalty notice.

(1) A police officer may issue a fixed penalty notice to any person who contravenes the provisions of sections 3(2)(a) or section 14.

(2) A fixed penalty notice issued by a police officer in accordance with this Act shall be lawful notice that the person is charged with the commission of an offence and that a complaint will be made against that person in respect thereof requiring him or her to either pay the fixed penalty of five hundred dollars within ten business days or to appear at the court specified in the notice on the day and at the hour stated therein to answer the said complaint.

(3) The police officer shall send to the Magistrate for the magisterial district in which the offence is alleged to have been committed, a duplicate of the notice, which duplicate shall be deemed to be a complaint laid before the Magistrate and a summons issued by the Magistrate for the purposes of the Magistrate's Code of Procedure Act.

(4) A notice issued under this section shall be signed by the police officer and shall specify—

- (a) the date, time and place of the giving of the notice;
- (b) the provision of the section creating the offence alleged and such particulars of the offence as are required for proceedings under the Magistrate's Code of Procedure Act, Cap. 3.17;
- (c) the time within which the fixed penalty may be paid in accordance with the

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provisions of this section;

- (d) the amount of the fixed penalty;
- (e) the Clerk of the Magistrate to whom, and the address at or to which the fixed penalty may be paid;
- (f) the address of the Magistrate's Court at which the person is required to appear in the event of his or her failure to pay the fixed penalty within the specified time, and the date and time of such appearance.

(5) Where a notice has been given under this section, the person may pay the fixed penalty in accordance with the notice.

(6) The time within which the fixed penalty shall be payable shall be ten business days from the date of the notice, and where payment reaches the Clerk of the Magistrate after that time, it shall not be receivable and shall be returned to the sender.

(7) Where the fixed penalty is duly paid in accordance with the notice, the proceedings instituted by the notice shall be discontinued.

(8) Payment of the fixed penalty shall be made to the Clerk of the Magistrate's Court District "A" Basseterre or the Clerk of the Magistrate's Court, District "C", Charlestown and shall be dealt with in the same manner as payment of a fine imposed for an offence under the Magistrate's Code of Procedure Act.

(9) The fixed penalty notice shall be presented for payment of the fixed penalty.

(10) In any proceedings, a certificate that payment of the fixed penalty was or was not made to the Clerk of the Magistrate by a date specified in the certificate shall, if the certificate is signed by the Clerk, be sufficient evidence of the facts stated, unless the contrary is proved.

(11) Where the fixed penalty is not paid within the time specified in the notice, proceedings in respect of that offence shall be in accordance with the provisions of the Magistrate's Code of Procedure Act.

14. Regulations.

The Minister, in consultation with the Chief Medical Officer, may make Regulations to better give effect to the provisions of this Act.

15. Amendment of Schedule.

The Minister may by Order amend any Schedule to this Act.

16. Transition.

Any person who immediately before the date of commencement of this Act allows smoking on their premises shall—

- a. upon the date of the commencement of this Act be deemed to be duly licensed under this Act until the 31st day of October 2023; and

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- b. shall require a licence issued pursuant to the provisions of this Act in order to continue to allow smoking on their premises after the 1st day of November 2023.

LANEIN K BLANCHETTE
Speaker

Passed by the National Assembly this 20th day of June, 2023.

TREVLYN STAPLETON
Clerk of the National Assembly