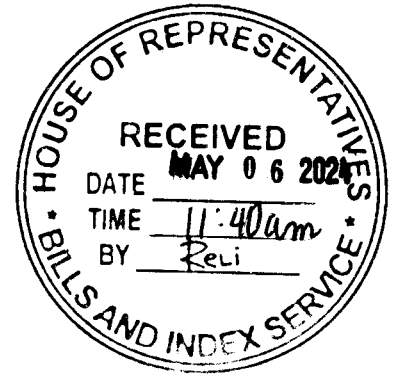


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Nineteenth Congress
Second Regular Session

House Bill No. **10329**



Introduced by **Representative JOEY SARTE SALCEDA**

AN ACT
PENALIZING ILLICIT TOBACCO TRADE AND PROVIDING PENALTIES
THEREFOR

EXPLANATORY NOTE

Stakeholders have a consensus to check illicit tobacco trade. While the figures from different studies on the extent of illicit tobacco trade vary widely, Euromonitor, an established market research firm, estimates that 11% to 15% of cigarettes sold in the Philippines are from illicit sources.

Illicit tobacco trade is particularly detrimental to public health. Illicit tobacco trade makes cheap cigarettes accessible to the consumers, especially the poor and the youth, and leads to losses in tobacco tax revenues, which, through the Sin Tax Reform Law, are earmarked for the implementation of the Universal Health Care (UHC) Law. UHC ensures access to cost-effective and quality healthcare for every Filipino.

Illicit tobacco trade in the country not only dampens the effect of taxation in lowering tobacco consumption, reducing health risks, and augmenting revenues for health and development spending. It also weakens government institutions and aids other criminal activities.

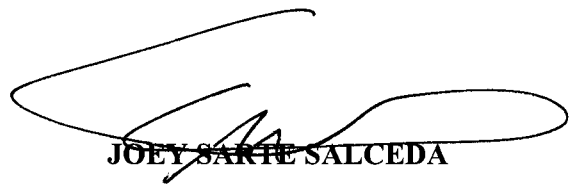
Illicit trade can be neutralized through good enforcement, good governance, and good institutions. As of May 2023, the Bureau of Customs (BOC) has destroyed 19,419 cases and 667 reams of smuggled cigarettes, worth PhP1.44 billion. This shows that anti-smuggling campaigns can be successful in recouping revenues. But much more has to be done.

Smuggling and other forms of illicit trade will persist with impunity unless enforcement measures that increase the probability of apprehension are strengthened. Increasing penalties by itself is insufficient. While harsher penalties are necessary, they are only effective as

deterrents when the likelihood of catching perpetrators is high. Thus, harsher penalties must be linked to stronger enforcement. Differentiating penalties based on the degree of involvement aligns with the principle of proportionality in justice and acts as an effective deterrent.

This bill seeks to impose heavy and differentiated penalties based on the degree of involvement in illicit trade; establish a modern digital tracking and tracing system; form an inter-agency body to facilitate information sharing and collaborative enforcement among government agencies and stakeholders; broaden the scope of activities that fall under illicit tobacco trade; and strengthen monitoring by mandating the conduct of regular surveys to determine the size, volume, nature and conduct of illicit trade.

In view of the foregoing, early passage of this bill is earnestly sought.



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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act shall be known as the "Anti-Illicit Tobacco Trade Act."

SEC. 2. *Declaration of Policy.* – It is the policy of the State to strengthen tax administration and minimize revenue losses resulting from illicit tobacco trade, thereby promoting sustainable economic growth.

The State is committed to safeguarding consumers from the proliferation of unregulated tobacco products.

The State recognizes that the illicit trade of tobacco increases accessibility and affordability of tobacco products, undermines tobacco regulation, especially excise tax measures on tobacco products, causes significant losses in government revenues, and undermines economic stability.

The State acknowledges the need to develop scientific, technical, and institutional capacity to plan and implement appropriate measures to mitigate all forms of illicit trade in tobacco products.

SEC. 3. *Definition of Terms.* – As used in this act:

- a) “Illicit tobacco trade” refers to any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of tobacco products, including vapor products and heated tobacco products, including any practice or conduct intended to facilitate such activity.
- b) “Importation” refers to the act of bringing goods from a foreign territory into Philippine territory, whether for consumption, production input, warehousing, or admission as defined in this Act.
- c) “Cigarette” refers to any roll or tubular construction containing tobacco or its derivatives and is intended to be burned or heated under ordinary conditions of use;
- d) “Counterfeit tobacco products” refers to production of tobacco products with brand labels that are used without the permission of the trademark owner.
- e) “Contraband tobacco products” refers to any tobacco product that is not purchased, possessed, acquired, marked, stamped, transported, stored or sold in accordance with existing laws and includes unmarked tobacco possessed without lawful reason.
- f) “Digital platforms” refer to information and communication technology-enabled mechanisms that connect and integrate producers and users in online environments where goods and services are requested, developed, and sold, and data is generated and exchanged such as, but not limited to, e-marketplace, mobile application platforms, online delivery platforms, social media platforms, and travel platforms.
- g) “Floor price” refers to the minimum retail price of cigarettes set by the Bureau of Internal Revenue (BIR), taking into account the sum of the excise tax, value-added tax (VAT), and production cost of a tobacco product.
- h) “Heated tobacco products” also referred to as Heated Tobacco Product (HTP) Consumables or Heat-Not-Burn Product Consumables, refers to tobacco products that are intended to be consumed through heating tobacco, either electronically or through other means, sufficient to release an aerosol that can be inhaled, without combustion of the tobacco. HTP Consumables or Heat-Not-Burn Product Consumables may also include liquid solutions and gels that are part of the product and are heated to generate an aerosol. HTPs may or may not operate by means of an HTP Device.
- i) “Manufactured tobacco products” refers to any product entirely or partly made of the leaf tobacco as raw material, which undergoes a technical process of creation or

assembly by hand or machinery to be used for smoking, heating, puffing, or for oral or nasal use on a commercial scale.

- j) "Misclassification" refers to the use of insufficient or wrong description of the goods or the use of erroneous tariff heading/s and sub-heading/s resulting in deficiency between the duty and tax that should have been paid and the duty and tax actually paid; and/or to avoid compliance with government regulations related to the entry of Regulated, Prohibited, or Restricted goods into Philippine Customs territory.
- k) "Misdeclaration" refers to a false, untruthful, erroneous or inaccurate declaration as to quantity, quality, description, weight or measurement of the goods resulting in deficiency between the duty and tax that should have been paid and the duty and tax actually paid; and/or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into Philippine customs territory.
- l) "Smuggling" refers to the fraudulent act of importing any goods into the Philippines, or the act of assisting in receiving, concealing, buying, selling, disposing or transporting such goods, with full knowledge that the same has been fraudulently imported, or the fraudulent exportation of goods.
- m) "Undervaluation" refers to the situation when the declared value fails to disclose in full the price actually paid or payable; or any dutiable adjustment to the price actually paid of payable; or when an incorrect valuation method is used; or the valuation rules are not properly observed; resulting in a discrepancy in duty and tax to be paid between what is legally determined as the correct value against the declared value.
- n) "Unmanufactured tobacco products" refers to the leaves or any other component of the tobacco plant, which are processed for use in the manufacturing of cigarettes and other tobacco products.
- o) "Tracking and tracing" refers to the secure physical marking, electronic system, digitized real-time monitoring of movement and routing of products subject to tax throughout the supply chain by the competent government body.
- p) "Vapor products" refer to any liquid solution or gel which contains nicotine that transforms into an aerosol without combustion through the employment of a mechanical heating element, battery or circuit that can be used to heat such solution or gel, and includes but is not limited to, a cartridge, a tank, and the device without a cartridge or tank. It is commonly known as 'e-liquids' for 'e-cigarettes'. It also includes electronic nicotine and non-nicotine delivery systems (ENDS/ENNDS) which are combinations of non-tobacco containing e-liquids or refills which contain up to sixty-

five milligrams per milliliter (65mg/ml) of nicotine in the e-liquid or refill and an electronic delivery device to produce an aerosol, mist or vapor that users inhale by mimicking the act of smoking.

SEC. 4. *Schedule of Regulated Items.* – The following items are considered regulated under this Act:

- i) Tobacco leaf processing machinery;
- ii) Cigarette making machines;
- iii) Cigar rolling equipment;
- iv) Machines for producing heated tobacco products and vapor products;
- v) Filters and paper used specifically for tobacco product manufacturing;
- vi) Flavorings, additives, and other ingredients used in tobacco products;
- vii) Packaging and labeling machinery for tobacco products; and
- viii) Any other machinery or component primarily designed for tobacco manufacturing.

SEC. 5. *Mandatory Registration of Tobacco Manufacturing Equipment.* – Any equipment, machinery, components, or ingredients specifically used for tobacco manufacturing as defined under Section 3 of this Act is required to be registered with the Bureau of Internal Revenue (BIR) prior to their use. The registration shall include detailed specifications, origins, and intended use of the equipment, machinery, components, or ingredients.

New business entities, upon establishment or acquisition of tobacco manufacturing-related items, shall have a period of 30 days from the date of possession or acquisition to complete their registration with the BIR.

Business entities or individuals already in possession of tobacco manufacturing-related items prior to the enactment of this provision shall be given a transitory period of 90 days to comply with the registration requirements. During this transitory period, existing manufacturers shall not be penalized for previous non-registration of their equipment, machinery, components, or ingredients.

Registrants are required to update their registration details annually or upon any significant change in their inventory. In the event of a significant change in their inventory or the

acquisition of new manufacturing-related items, an immediate update within 30 days of such change is required.

Failure to comply with the mandatory registration under this Section shall be subject to a fine and forfeiture of the items in favor of the government, in accordance with the guidelines to be established by the BIR.

SEC. 6. *Tracking and Tracing System.* – To fight tax evasion and protect consumers, an effective tracking and tracing system shall be established for the entire value chain of tobacco, including but not limited to activities involving the production, processing, manufacturing, storage, distribution, and selling of tobacco products.

- a) *Physical and Digital Markers.* Cigarettes, heated tobacco products and vapor products must bear secure physical marks, such as stamps. These stamps must combine physical and digital features to strengthen their resilience to fraud and counterfeiting. The BIR, in consultation with the DICT, NTA, BOC, and DTI, shall improve physical markers to make them more secure and introduce a unique digital or electronic system with an up-to-date electronic database of the tobacco value chain from inputs to its finished product, which allows for real time monitoring.
- b) *Tobacco Database.* Upon the operationalization of the tracking and tracing system, the BIR shall maintain the tobacco database. The BIR shall compel all government agencies required to collect data to regularly input necessary data or information in the said systems and compel all stakeholders to submit data regularly. The results of the same shall be annually published on the BIR website or a similar platform subject to the limitations imposed by the Data Privacy Act.
- c) *Integrity of the track and trace system.* The integrity of the development, operation, and oversight of the tracking and tracing system shall be ensured. It must be transparent and devoid of conflict of interest with the parties subjected to the system. Rigorous security protocols shall be implemented to protect the database from breaches, unauthorized access, and cyber threats for all systems of tracking and tracing.
- d) *Digital Verification System (DVS).* The Bureau of Internal Revenue (BIR) is hereby mandated to establish and operationalize a Digital Verification System (DVS) to further strengthen the track and trace system. This system shall utilize QR codes or other

approved digital markers to be affixed to or incorporated in all tobacco products legally sold within the jurisdiction of the Philippines.

The QR code or digital marker shall be unique for every tobacco product and shall contain pertinent information such as the product's origin, manufacturer, production date, batch number, and other relevant data, as may be identified or required by the BIR. The DVS shall be linked to the centralized tracking and tracing database managed and monitored by the BIR, which will store all the information related to the QR codes or digital markers.

- e) *International Collaboration.* To strengthen and enhance the track and trace system, the BIR shall actively seek collaboration and information exchange with international bodies, leveraging global best practices and databases.
- f) *Citizens' Participation.* The BIR and DICT are mandated to develop a comprehensive, user-friendly mobile application which allows citizens to verify the payment of excise taxes for tobacco products and vapor products and trace the path from origin (production/import) to its destination (consumption). This application shall allow citizens to actively participate in reporting anomalies to the BIR.
- g) *Engagement of Track and Trace Provider.* The government shall engage only one track and trace provider who shall, under the supervision and direction of the Commissioner of Internal Revenue, be responsible for providing, monitoring, and administering the track and trace system, provide equipment and devices, and perform other such acts incidental or necessary to the proper implementation of the provisions of this Act.
- h) *Cost.* All costs pertaining to the procurement of tax stamps shall be borne by the manufacturer or importer of tobacco products, as the case may be: Provided, That the government may subsidize the cost of developing the system for the first year of implementation.
- i) *Track and Trace System Funds.* In addition to any appropriation to implement this Section, fees or charges collected in relation to the track and trace system may be recorded as trust receipts of the implementing agencies, and shall be exclusively disbursed to defray the cost of services or equipment required to fully implement the said program, subject to rules and regulations to be issued by the implementing agency.

SEC. 7. *Illicit Tobacco Trade Monitoring.* – In order to ascertain the magnitude of illicit tobacco trade, assess compliance with regulatory measures, and improve policy administration and implementation, the PSA is mandated to conduct randomized nationally representative

surveys and studies encompassing producers, traders, retailers, and consumers, and focusing on aspects such as production, consumption, prices, and compliance with regulation such as tax stamps, packaging guidelines, storage guidelines, among others, to guide future policies on regulation annually or as often as possible. The results of which shall be published and submitted to Congress under their oversight powers.

SEC. 8. *Illicit Tobacco Trade.* – The crimes and statutory offenses under Chapter II, Title X of the National Internal Revenue Code and Offenses under Chapter I, Title XIV of the Customs Modernization and Tariff Act, where the good involved is a tobacco product or an implement in the domestic manufacture of illicit tobacco products, shall be considered as illicit tobacco trade.

In addition, the crime of illicit tobacco trade involving manufactured tobacco products, including products such as cigars, cigarettes, heated tobacco products, and vapor products, shall include the following acts:

- a) Importing or bringing into the Philippines without the requisite import permits from the appropriate regulatory agencies;
- b) Using import permits belonging to person/s, natural or juridical, other than those specifically named in the permit;
- c) Using fake, fictitious or fraudulent import permits or shipping documents;
- d) Selling, lending, leasing, assigning, consenting or allowing the use of import permits of corporations, non-governmental organizations, associations, cooperatives, or single proprietorship by other persons;
- e) Misclassification, under valuation or misdeclaration upon the filing of import entry and revenue declaration with the BOC in order to evade the payment of rightful taxes and duties due to the government;
- f) Organizing or using dummy corporations, non-governmental organizations, associations, cooperatives, or single proprietorship for the purpose of acquiring import permits;
- g) Allowing the use of private ports, fish port, fish landing site, resort, and/or airport to perpetrate the crime of smuggling, irrespective of quantity;
- h) Producing, manufacturing or selling counterfeit or fake cigars, cigarettes, HTPs, or vapor products;

- i) Producing, manufacturing or selling unmarked packs of cigars or cigarettes, HTPs, or vapor products, without the required license or registration from the concerned government agencies;
- j) Storing, transporting, distributing, or selling manufactured tobacco OR products, in the absence of the necessary licenses or permits as required by the concerned government agencies and without the registration requirement by the BIR;
- k) Declaring tobacco products as for export when they are in fact sold or intended for sale in the domestic market to evade taxation;
- l) Selling of tobacco products at prices below the floor price or minimum price as published by the BIR; and
- m) Selling, distribution, or offer for sale of tobacco products on any digital platforms, including but not limited to e-commerce websites, social media platforms, online marketplaces, and other digital mediums.
- n) Producing, distributing, selling, or applying fake or counterfeited secure markings, such as tax stamps.

SEC. 9. *Liability Under Other Laws.* – Prosecution under this Act shall be without prejudice to any liability or violation of the provisions of the Revised Penal Code, as amended, or other special laws except those acts considered as illicit tobacco trade punished under the National Internal Revenue Code and the Customs Modernization and Tariff Act.

SEC. 10. *Penalties.* –

- a) Any person found guilty of any of the punishable acts enumerated in Section 4 shall be punished with imprisonment of not less than twenty (20) years and one day but not more than forty (40) years and a fine twice the fair market value and the aggregate amount of the taxes, duties, and other charges avoided by the tobacco illicit trade, for finished products such as cigars, cigarettes, heated tobacco products, or vapor products.
- b) Any person found guilty of aiding or abetting in any of the punishable acts enumerated in Section 4 shall be punished with imprisonment of not less than twelve (12) years and one day but not more than twenty (20) years and a fine equal to the fair market value of the smuggled products and the aggregate amount of the taxes, duties, and other charges avoided.

- c) Any person found guilty of any of the punishable acts enumerated in Sec. 4 hereof who provides information or testifies regarding any insider knowledge in the conduct of the illicit trade to which s/he is accused of, against any other involved party, and is material in the establishment of the case, shall benefit from a mitigating circumstance or a reduced penalty of not less than six (6) years and one day but not more than twelve (12) years imprisonment.

In all cases, the illicit tobacco products shall be confiscated and shall be forfeited in favor of the government. The same shall be destroyed in accordance with the provisions of existing laws.

When the offender is a juridical person, criminal liability shall attach to its president, chief operating officer, manager or any other corporate officer who consents to or knowingly tolerates or ignores the commission of the offense.

Any person, natural or juridical, found guilty under Section 4 (a) to (f) and Section 5 of this Act, shall also suffer the penalty of perpetual absolute disqualification to engage in any business involving importation.

If the offender is a government official or employee, the penalty shall be imprisonment of not less than forty (40) years and a fine twice the fair market value and the aggregate amount of the taxes, duties, and other charges avoided by the tobacco illicit trade, for finished products such as cigars, cigarettes, heated tobacco products, or vapor products. In addition, he/she will suffer perpetual absolute disqualification from public office.

The foregoing notwithstanding, the Bureau of Internal Revenue in accordance with its power to assess and collect, is mandated to issue a schedule of fines based on the violations stated in this Act, which shall be immediately due and demandable upon the arrest of the offender/s or the seizure or confiscation of the illicit tobacco trade.

SEC. 11. *Responsibility and Liability of Digital Platforms.* – Digital platforms and any third-party intermediaries shall be responsible for ensuring that no tobacco products shall be sold in their digital platforms.

Upon discovery of any such violation, the BIR, in collaboration with DTI and DICT, shall issue a notice to the concerned online platform, requiring the immediate removal of the illicit product listing. Failure to comply with the removal notice within 30 days shall make them liable to pay a fine and suffer potential suspension of the platform's operation within the jurisdiction of the Philippines, based on the guidelines to be issued by BIR.

The DICT is hereby granted the authority and capacity to block or terminate the websites or platforms of sellers, online marketplaces, or third-party intermediaries found to be in repeated violation of this provision.

Prior to any blocking or termination action, the DICT shall issue a formal notice to the concerned entity, providing them an opportunity to address and rectify the violations within a specified period. If the violations persist beyond the provided rectification period, the DICT shall proceed with the blocking or termination action and shall notify relevant internet service providers to enforce the same.

SEC. 12. *Inter-Agency Tobacco Illicit Trade Council.* – An inter-agency council shall be established to oversee the implementation of this Act.

It shall be chaired by the Department of Finance and shall be composed of a representative each from the following:

- (1) Department of Finance (DOF) as Chair;
- (2) Department of Trade and Industry (DTI);
- (3) National Tobacco Administration (NTA);
- (4) Department of Health (DOH);
- (5) Department of Information and Communications Technology (DICT);
- (6) Department of Interior and Local Government (DILG); and
- (7) Union of Local Authorities of the Philippines (ULAP).

Representatives from government agencies must hold a position of at least Assistant Secretary to participate in coordination meetings.

The Council shall convene at least once a month or as frequently as possible upon the initiation of the Chairperson. The Council may invite resource person/s to discuss important matters as they may deem necessary.

Further, the Council shall create an Enforcement Group composed of the Bureau of Internal Revenue (BIR), the Bureau of Customs (BOC) and other government agencies they may deem necessary and appropriate to enforce measures to combat illicit tobacco trade by effecting searches, seizures and arrest, conducting inspections and securing documents, and other functions that the Council may direct.

SEC. 13. Powers and Functions of the Inter-Agency Council. – The Council shall have the following powers and functions:

a) To prepare and implement appropriate measures to prevent and suppress illicit tobacco trade;

b) To establish a mechanism for the sharing of data or information on illicit tobacco trade within and among the members of the coordinating body including the identification and determination of the patterns of illicit trade in localities, possible routes for illicit tobacco trade, networks involved and possible hotspot areas, among others.

c) To ensure the information disclosed are properly recorded and kept and complies with existing laws and rules.

d) To create effective pathways and guidelines to implement measures against illicit tobacco trade.

e) To disseminate the policies and guidelines established by the coordinating body and ensure its implementation in both the national and local levels.

f) To coordinate and network with similar bodies internationally or globally and share lessons and experiences to better the implementation against illicit tobacco trade.

g) To update the schedule of regulated items as defined in Section 8 of this Act.

h) To set other important functions and perform and carry out the same in accordance with the rules set by the body.

SEC 14. *Exclusion of Tobacco Products from De Minimis Rule.* – The de minimis exemption provided for under Section 423 of Republic Act 10863 or the Customs Modernization and Tariff Act shall no longer apply to tobacco products and regulated items defined under Section 4 of this Act, irrespective of value.

SEC. 15. *Appropriations.* – The amount of Five Hundred Million Pesos (Php500,000,000.00) shall be appropriated under the Bureau of Internal Revenue for the establishment of a tracking and tracing system under this Act. The other participating agencies in this Act are herein authorized to create and augment their budget in the annual General Appropriations Act (GAA) for items connected to the implementation of this Act.

SEC. 16. *Implementing Rules and Regulations.* – Within ninety (90) days from the effectivity of this Act, the DOF, in consultation with other stakeholders, shall promulgate the necessary guidelines for the effective implementation of this Act.

SEC. 17. *Separability Clause.* – If any provision of this Act is declared unconstitutional or invalid, the validity of other provisions shall not be affected thereby.

SEC. 18. *Repealing Clause.* – All laws, decrees, orders, rules and regulations, other issuances, or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 19. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,