

Explanatory Memorandum Ordinance on Restricting Tobacco Use Saba

1. Cause and necessity for this regulation

The cause for the proposed ordinance lies in signals from schools and concerned parents, that electronic smoking devices were sold to minors. Where in the European part of the Netherlands tobacco sales, including electronic smoking devices, are prohibited to be sold to minors, on Saba such regulations are not in place. The Tabaks- en Rookwarenwet, limiting the sale of tobacco and related products is not applicable to the BES-islands, and the Wet Beperking Tabaksgebruik BES and the Besluit Beperking Tabaksgebruik BES are outdated, transposed Dutch Antillean legislation, with no mention of electronic smoking devices and therefore no regulation on the sale of it.

While the use of tobacco is a topic that national government regulates, Saba minors currently do not have the same protection as their peers in the European Netherlands and are free to the exposure of tobacco related products.

The scope of this ordinance is limited. The need for more regulation on the sale of tobacco in accordance with the WHO Framework Convention on Tobacco Control stays. Although the Framework is not applicable to the Dutch Caribbean, it is highly undesirable and difficult to explain that people living in the public entities are not given the same level of protection as people in the European part of the Netherlands. Due to limited capacity within the Public Entity Saba and the urgency of regulating the sale of electronic smoking devices, this ordinance is to be seen as the first step towards an equal level of protection from the harmful effects of tobacco.

2. Content proposed ordinance

The proposed provisions are mostly in line with regulations stipulated in the Tabaks- en Rookwarenwet.

Article 1 defines tobacco related products in line with the Tabaks- en Rookwarenwet.

Article 2 – 1 prohibits the sale of any tobacco or related products to minors.

Article 2 – 2 prescribes determining the age of a customer by doing an ID- check when the customer not clearly looks at least 25 years old.

Article 2- 3 prescribes sellers to have a clear sign stating that no tobacco or related products are being sold to minors.

Article 3 prohibits the sale of any liquids with taste determining additives used for electronic smoking devices. In the Tabaks- en Rookwarenwet a similar provision will go into effect in July 2023. The reason for the ban of the sale of these products lies in the fact that flavor additives make it more attractive to smoke.

Article 4 arranges the fines for violating and are based on the Tabaks- en rookwarenwet.

Article 5 arranges the possibilities for the governor to temporarily prohibit to sell tobacco products from a premises after multiple violations, as well as the possibility to apply a *last onder bestuursdwang* to

enforce this. This is in accordance with the Tabaks- en rookwarenwet.

3. Enforcement

Next to enforcement by the police, public entity enforcers will be authorized to enforce this ordinance.

In a small and isolated place like Saba enforcement on the sale of tobacco products to minors is more difficult since the use of mystery shoppers as in the European Netherlands is not as easy.

After having consulted the local police, in article 2-1 the possibility for the Governor to put further regulations in place and prescribe a model is put down. This model could be a register for electronic smoking devices and the obligation for sellers to keep track on the age of the customers buying the devices. The scope of the enforcement stretches to sellers only. When a minor is found with an electronic smoking device, it can be asked where he or she got it from. Should the minor have gotten the device from an adult, not being a seller, enforcement ends there. When traces lead directly to a seller, who has not used the registration model properly, enforcement can take place by using articles 4 and 5 of the ordinance.

The sales of tobacco products cannot be monitored constantly and therefore difficult to enforce. The height of the fines and measures put down in article 5 aim to still create a situation where the cost-benefit analysis of sellers will nudge towards compliance with the regulations. The ordinance mainly aims to further *denormalize* the use of tobacco products.

The effectiveness of the normative aspect of this ordinance, the awareness campaign and the enforcement will be under constant evaluation, dependent on signs from the community.