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PANYERONG PULIS @ UR SERBIS 24/7

Kailangan mo ba ng payo ukol sa pagpapatupad ng batas?
 MAGTANONG KAY PANYERONG PULIS @ UR SERBIS 24/7

Ano ang maaring itanong?

- Tamang pagpapatupad ng batas
- Batas administratibo ng PNP

Saan maaaring magtanong?

- **LANDLINE:**
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NATION-WIDE SMOKING BAN



Have you ever tried to accost or caution somebody for smoking? Chances are, the person accosted would retort that it is none of your business as it is his right, or that his act of smoking is an exercise of personal liberty. And so, arguments and verbal tussles usually ensue.

However, this should no longer be the case. With the issuance of Executive Order No 26, Series of 2017, entitled **Providing for the Establishment of Smoke-Free Environments in Public and Enclosed Places**, which took effect on July 23, 2017, a nation-wide smoking ban, is now in full force.

Thus, if a member of the Philippine National Police who is mandated to enforce the provisions of the said order is engaged by anybody into an argument, it would be prudent that he be armed with the correct legal information so as to ensure that the order is enforced and that the argument is won.

What is the authority of the State to intrude into this personal liberty of its citizen?

It is the inherent police power of the State. “**Police power** is the state authority to enact legislation that may interfere with personal liberty or property to promote the general welfare. Negatively, it is defined as “that inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety, and welfare of society.” **(Wikipilipinas, September 28, 2007)**

There is no denying that smoking is hurtful to the comfort, safety, and welfare of society. In fact, in one of its publications for its Tobacco Free Initiative (TFI), the UN World Health Organization (WHO) said that *among young people, the short-term health consequences of smoking include respiratory and non respiratory effects, addiction to nicotine, and the associated risk of other drug use. Long-term health consequences of youth smoking are reinforced by the fact that most young people who smoke regularly continue to smoke throughout adulthood. Cigarette smokers have a lower level of lung function than those persons*

who have never smoked. Smoking reduces the rate of lung growth.

In adults, cigarette smoking causes heart disease and stroke. Studies have shown that early signs of these diseases can be found in adolescents who smoke. (CDC, Preventing Tobacco Use Among Young People—A Report of the Surgeon General, 1994)

Is the issuance of the executive order the first attempt by the State in regulating the use of tobacco?

No. In fact, as early as 1999, the government has already enacted Republic Act No 8749, otherwise known as the Philippine Clean Air Act of 1999 which prohibits smoking inside enclosed public places including public vehicles and other means of transport, and other enclosed areas.

In the same vein, Republic Act No 9211, or the Tobacco Regulation Act of 2003 prohibits smoking in certain public places, and prohibits the purchase and sale of cigarettes and other tobacco products to and by minors and in certain places frequented by minors.

All these are anchored on the fundamental state policy which provides that the State shall protect and promote the right to health of the people and instill health consciousness among them. **(Sec 15, Art II)**

What acts are declared unlawful and prohibited under the order?

The order restricts and penalizes the act of smoking tobacco products in enclosed public places and public conveyances, whether stationary or in motion, except in certain designated smoking areas. It requires that all public buildings or places that are accessible or open to the public regardless of ownership or right to access must be smoke-free inside and within 10 meters (33 ft) from entrances and exits or where people pass or congregate, and from air intake ducts. This includes but is not limited to:



- Government buildings;
- Schools, colleges and universities;
- Offices and other workplaces;
- Restaurants and other food and drink establishments;
- Hotels and other accommodation facilities;
- Hospitals, health centers, clinics and nursing homes;
- Transportation terminals;

- Churches;
 - Shopping centers, retail stores and other merchandise establishments;
 - Entertainment establishments;
 - Sports venues;
 - Other establishments that provide professional services
- (Section 3, EO No 26)**

The following acts are likewise unlawful and prohibited:

- For person-in-charge to allow, abet or tolerate smoking outside of Designated Smoking Areas (DSA)
- For any person to sell, purchase, distribute any tobacco products to and from minors;
- For a minor to smoke, sell or buy cigarettes, or any tobacco products;
- Ordering, instructing or compelling a minor to use, light up, buy or sell, distribute, deliver, advertise or promote tobacco products;
- Placing any advertisement outside of the premises of point of sale establishment;

- Placing of stalls or booths and other displays concerning tobacco promotion outside the premises of point of sale establishment. (Section 3, EO No 26)

- B) Person-in-charge who knowingly allow, abet, authorize or tolerate the prohibited acts under Section 3, or otherwise fail to fulfil the duties and obligations enumerated under Section 5. **(Section 6, EO NO 26)**

What are considered as public conveyances?

Public conveyances refer to modes of transportation servicing the general population, such as, but not limited to:

- Elevators
- Airplanes
- Ships
- Jeepneys
- Buses
- Taxicabs
- Trains
- Light Rail Transit
- Tricycles
- Other similar vehicles



What are the penalties for violation of the order?

The order states that the violation of the same shall be penalized in accordance with the applicable penalties provided under Section 32, RA No 9211. On the other hand, Section 32 of said law provides the following:

“SECTION 32. Penalties.—*The following penalties shall apply:*

a. Violation of Sections 5 and 6.—On the first offense, a fine of not less than Five hundred pesos (Php500.00) but not more than One thousand pesos (Php1,000.00) shall be imposed.

On the second offense, a fine of not less than One thousand pesos (Php1,000.00) but not more than Five thousand pesos (Php5,000.00) shall be imposed.

On the third offense, in addition to a fine of not less than Five thousand pesos (Php5,000.00) but not more than Ten thousand pesos (Php10,000.00), the business permits and licenses to operate shall be cancelled or revoked.

b. Violation of Sections 7, 8, 9, 10, and 11.—On the first offense, any person or any business entity or establishment selling to, distributing or purchasing a cigarette or any other tobacco

Who shall be liable under the order?

The following persons shall be liable and be punished in accordance with the governing provisions of RA No 9211, and other applicable laws:

- A) Any person or entity who commits any of the prohibited acts under Section 3 thereof; and

products for a minor shall be fined the amount of not less than Five thousand pesos (Php5,000.00) or an imprisonment of not more than thirty (30) days, upon the discretion of the court. For succeeding offenses, both penalties shall apply in addition to the revocation of business licenses or permits in the case of a business entity or establishment.

If the violation is by an establishment of business entity, the owner, president, manager, or the most senior officers thereof shall be held liable for the offense.

If a minor is caught selling, buying or smoking cigarettes or any other tobacco products, the provisions of Article 189 of Presidential Decree No. 603 otherwise known as The Child and Youth Welfare Code, as amended, shall apply.

c. Violation of Sections 13 to 27.—On the first offense, a fine of not more than One hundred thousand pesos (Php100,000.00) or imprisonment of not more than one (1) year, or both, at the discretion of the court shall be imposed.

On the second offense, a fine of Two hundred thousand pesos (Php200,000.00) or imprisonment of not more than two (2) years, or both, at the discretion of the court shall be imposed.

On the third offense, in addition to a fine of not more than Four hundred thousand pesos (Php400,000.00) or imprisonment of not more than three (3) years, or both, at the discretion of the

court, the business permits and licenses, in the case of a business entity or establishment, shall be revoked or cancelled.

In the case of a business entity or establishment, the owner, president, manager or officials thereof shall be liable.

If the guilty officer is an alien, he shall summarily be deported after serving his sentence, and shall be forever barred from re-entering the Philippines."

Is the prohibition absolute?

No. The order provides for Designated Smoking Areas (DSAs) that shall comply with the following specifications:

- DSAs shall have a combined area and buffer zone not larger than 20% of the total floor area of the building but not smaller than 10 meters (33ft).
- DSAs shall have no opening that will allow air to escape to the smoke-free area of the building or conveyance.
- DSAs shall have a ventilation system independent of other ventilation system servicing the rest of the building or conveyance.
- DSAs shall prominently display a "Smoking Area" signage, graphic health warnings, and prohibition on the entry of persons below 18 years old.
- There shall only be one DSA per building or conveyance.

No DSAs shall be installed in the following facilities:

- Centers of youth activities (playschool, prep schools to universities).
- Youth hostels and recreational facilities for minors.
- Elevators and stairwells.
- Fire hazard locations (gas stations and storage areas for flammable liquids, gas, explosives or combustible materials).
- Hospitals
- Health Centers
- Medical, Dental and Optical Clinics
- Nursing Homes
- Dispensaries and Laboratories
- Food Preparation Areas (**Section 4, EO No. 26**)

Who are mandated to enforce the provisions of the order?

Section 9 of the order directs members of the **Philippine National Police** and Smoke-Free Task Forces created by Local Government Units to carry out the provisions of the order.

Where the applicable penalties are only fines and/or cancellation of permit, is there a need to arrest violators of the order?

Sec. 6 (c), Rule 112 of the Revised Rules of Criminal Procedure states:

(c) **When warrant of arrest not necessary.** – A warrant of arrest shall not issue if the accused is already under detention pursuant to a warrant issued by the Municipal Trial Court in accordance with paragraph (b) of this section, or if the complaint or information was filed pursuant to Section 7 of this Rule or **is for an offense penalized by fine only**. The court then shall proceed in the exercise of its original jurisdiction. (**Si v Calis, AM No MTJ-03-1483, December 28, 2007.**)

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