

SAMOA

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2015, No. 12

AN ACT to provide for the establishment and administration of the Samoa Health Promotion Foundation, the establishment and management of the Health Promotion Fund, and for related purposes. *[27th March 2015]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART I
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Health Promotion Foundation Act 2015.

(2) This Act comes into force on a date to be nominated by the Minister.

2. Interpretation - In this Act, unless the contrary otherwise requires,:

“Board” means the Board of Directors constituted under section 7;

“chairperson” means the person appointed under section 7(3)(a);

“Chief Executive Officer” means the person appointed under section 18;

“cigarette” has the same meaning as in section 2 of the Tobacco Control Act 2008;

“deputy chairperson” is the person appointed under section 7(3)(b);

“Foundation” means the Samoa Health Promotion Foundation established under section 3;

“Fund” means the Health Promotion Fund established under section 22;

“Government” means the Government of the Independent State of Samoa;

“health promotion” means any act which is aimed at the fostering of a person’s physical, mental and social conditions by means of supporting personal behaviour, social conditions, policies and environments conducive to physical strength, a firm mental condition, a long life and a good quality of life;

“liquor” has the same meaning as in section 2 of the Liquor Act 2011;

“Minister” means the Minister of Health;

“qualified member” means a member of the Board appointed under section 7(3)(e);

“sugar sweetened beverages” include all sodas, fruit drinks, sport drinks, low-calorie drinks and other beverages that contain added caloric sweeteners, such as sweetened tea, rice drinks, bean beverages, sugar cane beverages, horchata and nonalcoholic wines/malt beverages;

“tobacco product” has the meaning as in section 2 of the Tobacco Control Act 2008.

PART II ESTABLISHMENT OF SAMOA HEALTH PROMOTION FOUNDATION

3. Establishment of Foundation-(1) The Samoa Health Promotion Foundation is established.

(2) The Foundation:

(a) is a body corporate with perpetual succession;

(b) shall have an official seal;

(c) can sue and be sued in its corporate name;

(d) is capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property for the purpose of performing its functions and exercising its powers under this Act; and

(e) is capable of doing and suffering all such acts and things as bodies corporate may by law do or suffer and which are necessary or expedient for the purpose of performing its functions and exercising its powers under this Act.

(3) The official seal of the Foundation shall be kept in such custody as the Foundation directs and must not be used except as authorised by the Foundation.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Foundation affixed to a document and shall presume that it was duly affixed.

4. Objectives of Foundation - The objectives of the Foundation are:

(a) to promote and encourage health promotion in the population of all ages in accordance with national health policies;

- (b) to fund activities related to the promotion of good health, safety or the prevention and early detection of disease;
- (c) to increase awareness of programs for promoting good health in the community through the sponsorship of sports, the arts and culture;
- (d) to encourage healthy lifestyles in the community and support activities involving participation in healthy pursuits; and
- (e) to fund or conduct studies and research, or encourage the conduct of the study and research, training or organisation of meetings in support of these objects.

5. Functions of Foundation - The following are the functions of the Foundation:

- (a) to promote its objectives;
- (b) to make grants from the Fund for activities, facilities, projects or research programs in furtherance of the objects of the Foundation;
- (c) to provide sponsorships for sporting, cultural or other activities which promote the objectives of the Foundation;
- (d) to keep statistics and other records relating to the achievement of the objectives of the Foundation;
- (e) to provide advice to the Minister on matters related to its objectives referred by the Minister to the Foundation and generally in relation to the achievement of its objectives;
- (f) to consult regularly with relevant Government Ministries and agencies and to liaise with persons and organisations affected by the operation of this Act;
- (g) to seek and secure funds for the Foundation;
- (h) to perform such other functions as are conferred on the Foundation by this or any other Act.

6. Powers of Foundation - The Foundation shall have powers to carry out its objectives and functions and all the acts as appear to the Foundation to be requisite, advantageous, or convenient for or in connection with the carrying out of the Foundation's objectives and functions or to be incidental to their proper discharge and may carry on any activities in that behalf either alone or through or in association with any other person or body.

PART III
ADMINISTRATION OF FOUNDATION

7. Board of Directors-(1) A Board of Directors for the Foundation is constituted, subject to this Act, and which shall be responsible for the policy and control of the Foundation.

(2) The Board is the governing body of the Foundation with the authority, in the Foundation's name, to perform the functions and exercise the powers of the Foundation.

(3) The Board shall consist of seven (7) members comprising of:

- (a) the Prime Minister who is the chairperson;
- (b) the Minister of Health who is the deputy chairperson;
- (c) a representative of the Ministry of Finance;
- (d) a representative of an organisation with a health focus;
- (e) three (3) qualified members appointed by the Head of State on the advice of Cabinet from persons selected from those with knowledge, ability and experiences in the fields of health promotion, community development, mass communication, sports, education, and law or administration.

(4) A qualified member:

- (a) must have a qualification in any of the specified fields; and
- (b) must not be a person who behaves in conflict with or inconsistent with the objectives of the Foundation under section 4.

8. Term of appointment - A qualified member:

- (a) holds office for a period not exceeding three (3) years on such terms and conditions as are determined by Cabinet; and
- (b) is eligible for reappointment.

9. Remuneration and allowances - A qualified member must be paid such remuneration and allowances as determined by Cabinet.

10. Removal from office - A qualified member may be removed from office by the chairperson, acting on the advice of Cabinet, for disability, inefficiency, bankruptcy, neglect of duty, misconduct or permanent departure from Samoa.

11. Resignation - A qualified member may resign office in writing signed by him or her and delivered to the chairperson.

12. Vacancy of office-(1) The office of a qualified member becomes vacant if the member:

- (a) dies;
- (b) is removed from office under section 10;
- (c) resigns under section 11; or
- (d) subject to subsection (2), completes his or her term of appointment under section 8(a).

(2) At the expiration of the term under section 8(a), if a new qualified member has not yet been appointed, the qualified member having vacated office at the expiration of the term must remain in office for continuing the performance of work until the newly appointed qualified member takes office.

(3) A vacancy of office is to be filled in the manner in which the original appointment was made.

13. Disclosure of interests, etc-(1) A member of the Foundation who is in any way, whether directly or indirectly interested in a contract or proposed contract with the Foundation must, as soon as practicable after the relevant facts have come to his or her knowledge, declare the fact and the nature and extent of the interest at a meeting of the Foundation.

(2) Subsection (1) does not apply if the interest of the member consists only of being a member or creditor of a body that is interested in a contract or proposed contract with the Foundation if the interest may properly be regarded as not being a material interest.

(3) For the purposes of subsection (1), a general notice given to the members of the Foundation by a member to the effect that he or she is a member, officer or employee of a body and is to be regarded as interested in any contract that may, after the date of the notice, be made with that body is sufficient declaration of interest in relation to any contract so made or proposed to be made if:

- (a) the notice states the nature and extent of the interest of the member in the body; and
- (b) when the question of the confirming or entering into a contract is first taken into consideration, the extent of the member's interest is not greater than that stated in the notice; and
- (c) the notice is read at a meeting of the Foundation or the member takes reasonable steps to ensure that it is brought up and read at the next meeting of the Foundation after it is given.

(4) A member of the Foundation who possesses any property or holds any office where, whether directly or indirectly, interests or duties might be created in conflict with the member's interests or duties as a member must, in accordance with subsection (5), declare at a meeting of the members of the Foundation the fact and nature and extent of the conflict.

(5) A declaration required by subsection (4) in relation to the possession of any property or the holding of any office must be made by a person:

(a) if the person possesses the property or holds the office as mentioned in subsection (4) when he or she becomes a member, at the first meeting of the Foundation held after -

(i) he or she becomes a member; or

(ii) the relevant facts as to the possession of the property or the holding of the office come to his or her knowledge,

whichever is the latter; or

(b) if the person comes into possession of the property or commences to hold the office as mentioned in subsection (4) after he or she becomes a member, at the first meeting of the Foundation held after the relevant facts as to the possession of the property or the holding of the office come to his or her knowledge.

(6) The chairperson must cause to be recorded every declaration under this section in the minutes of the meeting at which it was made.

(7) This section is in addition to, and not in derogation of, the operation of any Act or rule of law restricting a member from having an interest in contracts with the Foundation or from possessing property or holding offices involving interests or duties in conflict with the member's interests or duties as a member.

14. Validity of acts and decisions - An act or decision of the Board is not invalid by reason only:

(a) of a vacancy in the office of a member;

(b) of any defect or irregularity in or in connection with the appointment of a member; or

(c) in the case of a person appointed to act as chairperson or as a member, that the occasion for so acting had not arisen or had ceased.

15. Meetings of Board-(1) A meeting of the Board shall be called:

- (a) by the chairperson; or
- (b) by the deputy chairperson, in the absence or unavailability of the chairperson; or
- (c) on request in writing from at least two (2) directors.

(2) In the absence or unavailability of the chairperson and deputy chairperson, the members shall appoint a member to chair a meeting of the Board.

(3) Four (4) members constitute a quorum.

(4) Every question before any meeting of the Board shall be determined by a majority of members present at the meeting but the chairperson of the meeting shall have a deliberative vote and a casting vote.

(5) Except as otherwise provided by this Act, the Board may regulate its procedure as the Board thinks fit.

(6) The Board may co-opt other persons to attend and participate in the Board's deliberations, but such persons will not have the power to vote on any matter.

(7) The Board may appoint a member of staff to act as secretary to the Board but such staff member shall not be a member of the Board or have a right to vote.

16. Advisory committees-(1) The Board may appoint advisory committees consisting of one (1) or more persons, whether members of the Board or not, for the purposes of providing advice and information to assist the Foundation in the performance of its functions.

(2) The Board shall define or vary the terms of reference of those committees.

(3) Subject to this Act and to the control of the Board, each committee appointed under this section may regulate its procedure in such manner as the committee thinks fit.

(4) A member of an advisory committee shall be paid such allowances and expenses as are determined by Cabinet.

17. Delegation of powers-(1) The Board may, in respect of a specified matter or class of matters, by writing, delegate any of its powers to a member or committee of the Board except this power of delegation.

(2) Every member or committee purporting to act pursuant to a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(3) No delegation under this section shall prevent the exercise of any power or the performance of any function or duty by the Board.

(4) A delegation under subsection (1) may be:

- (a) made subject to conditions, qualifications and exceptions; and
- (b) revoked or varied at will.

18. Chief Executive Officer-(1) There shall be a Chief Executive Officer of the Foundation who is appointed by the Board.

(2) The Chief Executive Officer is appointed for a period of at least three (3) years, and is entitled to remuneration as determined by the Board and approved by Cabinet.

(3) The Chief Executive Officer shall devote the whole of his or her services to the Foundation and shall not occupy any other office or employment, whether remunerated or not, except that he or she may act as a director of any Board, Committee or Commission established by the Government or as required by any Act.

(4) The Board may revoke the appointment of the Chief Executive Officer:

- (a) on any of the grounds stated in section 10; or
- (b) if the Chief Executive Officer fails to comply with any of the terms and conditions of his or her appointment, or any lawful direction given by the Board.

19. Responsibilities of Chief Executive Officer-(1) The Chief Executive Officer is responsible for managing the Foundation and implementing the decisions of the Board.

(2) Subject to this Act and any resolution passed at a meeting of the Board, the Chief Executive Officer may do all things necessary or convenient to be done in connection with the performance of his or her duties.

(3) The Chief Executive Officer shall make a report at each meeting of the Board in relation to:

- (a) all health promotion contracts or agreements entered into by or on behalf of the Foundation since the previous meeting of the Board; and
- (b) all health promotion activities, campaigns, awareness programs, research, studies; and

- (c) the financial performance of the Foundation; and
- (d) any other matter in respect of which the Board requires the Chief Executive Officer to submit a report.

(4) Where the Chief Executive Officer is prevented by illness, absence or other similar cause from performing his or her duties, or when the office of Chief Executive Officer is vacant, the Board may appoint one (1) or more of the staff members of the Foundation to perform the Chief Executive Officer's duties.

20. Appointment of staff-(1) The Board may:

- (a) appoint and employ persons in addition to the Chief Executive Officer, subject to terms and conditions as the Board determines;
- (b) delegate to the Chief Executive Officer the power to make any appointment in accordance with subsection (1)(a); and
- (c) fix the remuneration and allowances of persons employed by the Foundation.

(2) The Board may enter into an agreement with the Public Service Commission and the Chief Executive Officer of the relevant Ministry or Government agency to provide for the secondment of employees to the service of the Foundation, on such terms and conditions as may be specified in the agreement.

(3) The Foundation may engage consultants or other persons to undertake any task or work for or on behalf of the Foundation on such terms and conditions as the Board determines.

21. Protection from personal liability-(1) No suit or other legal proceedings shall lie personally against any member, officer or employee of the Board or other person acting under the direction of the Board for anything which is in good faith done or intended to be done in the execution or purported execution of this Act or any other written law.

(2) Where the Board provides a service where information is supplied to the public, neither the Board nor any of its officers or employees involved in the supply of such information shall be liable for any loss or damage suffered by any member of the public by reason of any error or omission of whatever nature appearing in such information or however caused if made in good faith and in the ordinary course of the discharge of the duties of such officers or employees.

PART IV
FINANCIAL MATTERS

22. Health Promotion Fund-(1) A Health Promotion Fund is established and shall be administered by the Foundation.

(2) All money received by the Foundation must be paid into the Fund.

(3) The Fund's monies may be derived from:

- (a) Government of Samoa grants;
- (b) bequests, donations or other grants made to the Fund; or
- (c) any other income or payment due to the Fund.

(4) The Fund may be expended for:

- (a) the performance of the Foundation's functions;
- (b) meeting expenses, costs and expenditure properly incurred or accepted by the Board in the exercise of its powers and duties; or
- (c) meeting any expenses properly incurred in the administration of this Act and the Fund.

(5) No expenditure may be made from the Fund unless the expenditure is within the budget set under section 26.

23. Bank accounts - The Board shall open and maintain one (1) or more accounts with such bank or banks as the Board thinks fit and every such account shall be operated by such person or persons as may be authorised in that behalf by the Board.

24. Exemption from tax - The income of the Foundation is wholly exempted from income tax.

25. Charitable purpose - Any bequest, donation or grant made to the Foundation or the Fund is taken to have been made for a charitable purpose.

26. Budget - The Foundation shall, before the first of June in each year and in accordance with the Public Finance Management Act 2001, prepare a budget for the next financial year, of money to be paid into the Fund and money to be paid out of the Fund.

27. Accounts-(1) The Foundation must keep proper accounts and records of the transactions and affairs of the Foundation and do all things necessary to ensure that:

- (a) all funds received are brought to account;

- (b) all payments are properly authorised and correctly made and accounted for; and
- (c) there are adequate controls over the Foundation's assets, property under the Foundation's control, expenditure and liabilities.

(2) The Foundation shall be subject to the provisions of the Public Finance Management Act 2001 and for this purpose, despite the provisions of that Act, the funds received by the Foundation is regarded as public money and the assets and property of the Foundation is regarded as public property.

28. Annual report-(1) The Board shall cause to be prepared and submitted to the Minister, within six (6) months after the end of each financial year, an annual report containing:

- (a) financial statements for the preceding financial year;
- (b) a report on the operations of the Foundation during the preceding financial year; and
- (c) such other information as Cabinet may require.

(2) The financial statements referred to in subsection (1) shall be prepared in compliance with generally accepted accounting standards and shall consist of:

- (a) a statement of financial position of the Foundation;
- (b) a statement of the financial performance of the Foundation; and
- (c) proper and adequate notes to the financial statements.

(3) The financial statements referred to in subsection (2) shall present fairly the financial position and financial performance of the Foundation during the financial year to which they relate.

(4) The Foundation shall, within four (4) months after the end of each financial year, cause to be submitted to the Controller and Chief Auditor for audit, the financial statements and other information referred to in subsection (2).

(5) The financial year of the Foundation shall be from 1 July to 30 June.

(6) The Minister shall submit to the Clerk of the Legislative Assembly for tabling before Parliament, the annual report of the Foundation together with the Controller and Chief Auditor's report on the Foundation's financial statements, within 14 days of receiving the Controller and Chief Auditor's audit report.

29. Manner of operation - The Foundation shall operate in a financially responsible manner and, for this purpose, shall:

- (a) endeavour to maintain its long-term financial viability;

- (b) endeavour to cover all its annual costs, including the cost of capital, from its annual income;
- (c) endeavour to be a successful going concern; and
- (d) prudently manage its assets and liabilities.

30. Review of funding - The Foundation shall review its sources of funding under section 22(3) within five (5) years of this Act coming into force.

PART V MISCELLANEOUS

31. False information - Any person who:

- (a) attempts to obtain any financial assistance or other benefit provided under this Act by means of false or misleading statement or document; or
- (b) obtains any financial assistance or other benefit provided under this Act by means of false or misleading statement or document,

commits an offence and is liable, on conviction, to a fine not exceeding 50 penalty units or imprisonment for a term not exceeding three (3) years or to both.

32. Repayment - Where a person is convicted of an offence under section 31, the court may, in addition to imposing a punishment under that section, order the person to make repayment of the amount of money or value of benefit wrongfully obtained together with interest at the rate of 10 % per annum in respect of each day from the day that person received the financial assistance or benefit.

33. Offence by body corporate-(1) Where a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management may be charged and tried severally or jointly in the same proceedings with the body corporate.

(2) A person charged jointly or severally under subsection (1) shall have a defence, if having regard to the nature of his or her functions in that capacity and to all circumstances, he or she proves:

- (a) that the offence was committed without his or her knowledge, consent or connivance; and

- (b) that he or she took all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

34. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make regulations as may be expedient or necessary for giving full effect to the provisions of this Act.

(2) Without limiting subsection (1), regulations may be made for prescribing:

- (a) the procedure to be followed by any committee established under this Act;
- (b) the procedure relating to the giving of grants or other financial assistance;
- (c) the manner of applying for a grant or other financial assistance, the forms to be used and the information to be furnished;
- (d) the form in which a register or other records shall be kept or maintained under this Act and the entries to be made in the register and records;
- (e) the fees or charges to be imposed under this Act;
- (f) the manner of appointment, and the terms and conditions of service of the officers and servants of the Board; and
- (g) any other matter which the Board regards expedient or necessary for the purposes of this Act.

35. Transfer of personnel, resources and assets-(1) Where this Act provides for the Foundation to be responsible for any function or duty, or where responsibility for such function or duty is transferred to the Foundation from the Ministry of Health or any other Ministry, the Minister, after consulting with the Board, the Chief Executive Officer of the relevant Ministry and, in the case of staff and contractors, the Chief Executive Officer of the Public Service Commission and, in the case of resources and assets, the Chief Executive Officer of the Ministry of Finance may, by notice determine:

- (a) which staff and contractors will be transferred to the Foundation from the control, management and direction of the relevant Ministry;
- (b) which resources and assets will be transferred to or from the control and management of the relevant Ministry; and

- (c) the terms, conditions and other arrangements required for any transfer referred to in paragraphs (a) and (b), including but not limited to any payments and entitlements.
- (2) For the purposes of this Act or any other Act,:
 - (a) any staff or contractor that is transferred under subsection (1)(a) is regarded for all purposes as a member of the staff of the Foundation; and
 - (b) any resources and assets transferred under subsection (1)(b) is for all purposes vested in the Foundation.

36. Consequential amendments-(1) The Income Tax Act 2012 is amended as follows:

- (a) for Schedule 2, Part A (1) of the Income Tax Act 2012 -
 - (i) at the end of paragraph (y), omit the full stop and substitute a semicolon; and
 - (ii) after paragraph (y), insert the following new paragraph:

“(z) the income of the Samoa Health Promotion Foundation.”.

- (2) The Ministry of Health Act 2006 is amended as follows:
 - (a) in Schedule 1, after “Health Ordinance 1959”, insert “Health Promotion Foundation Act 2015”;
 - (b) in Schedule 2, clause 1.5 -
 - (i) for paragraph (c), omit “Promotion and”;
 - and
 - (ii) for subparagraph (i), omit “and Health Promotion”.

(3) The Public Bodies (Performance and Accountability) Act 2001 is amended by inserting in Schedule 1, Part B in its correct alphabetical position, “Samoa Health Promotion Foundation”.

**The Health Promotion Foundation Act 2015
is administered by the Ministry of Health.**

**Printed by the Clerk of the Legislative Assembly,
by authority of the Legislative Assembly.**