

REPUBLIC OF SOUTH AFRICA
TOBACCO PRODUCTS CONTROL AMENDMENT ACT

DRAFT
(MINISTER OF HEALTH)

GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate omissions from existing enactments

---- Words underlined with a solid line indicate insertions in existing enactments

BILL

To amend the Tobacco Products Control Act, 1993, in relation to the definitions, in order to provide for the extension of the terms "advertisement" and "public place"; to insert definitions for the terms "trade mark," and "work place"; to provide for the prohibition of advertising or promotion of tobacco products on goods, other than tobacco products; to provide for the prohibition of the promotion of tobacco products through sponsored events; to prohibit the free distribution of tobacco products and the receipt of gifts or cash prizes in contests, lotteries or games to the purchaser of a tobacco product in consideration of such purchase; to provide for the prescription of maximum yields of tar, nicotine and other constituents contained In tobacco products; to increase the fines and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:

Amendment of section 1 of Act 83 of 1393

1. Section 1 of the Tobacco Products Control Act, 1993 (hereinafter referred to as the principal Act), is hereby amended

- a. by the substitution for the definition of "advertisement" of the following definition:

"advertisement", in relation to any tobacco product, means any **[statement, communication, representation or reference distributed to members of the public or brought to their notice in any other manner and which is intended]** written, still or moving picture, sign, symbol or other visual image or message or audible message, designed to promote **[the sale of such]** or publicise a tobacco product or **[encourage the use thereof or draw attention to the nature, properties, advantages or uses thereof]** to promote smoking behaviour and includes the use in any advertisement or promotion to the public of a tobacco product manufacturer's, company name where the name or any part of that

name is used as or is included in a tobacco product trade mark and "advertise" has a corresponding meaning.

- b. by the substitution for the definition of "hazardous constituent" of the following definition:

"constituent", in relation to any tobacco product, means nicotine, **[and] tar and any other constituent of a tobacco product or of tobacco smoke which the Minister may by notice in the Gazette declare to be a constituent for the purpose of this Act;**

- c. by the substitution for the definition of "Director General" of the following definition:

" 'Director-General' means the Director-General: Health.";

- d. by the substitution for the definition of "Minister" of the following definition:

" 'Minister' means the Minister of Health";

- e. by the substitution for the definition of public place" of the following definition:

"public place" means any indoor or, enclosed area which is open to the public or any part of the public and includes a workplace and a public conveyance;

- f. by the substitution for the definition of "smoke" of the following definition:

"smoke" **[includes sniff, suck, or chew a tobacco product, and also have]** means to smoke, hold or otherwise have control over an ignited tobacco product [or any device containing an ignited tobacco product] weed or plant, and "smoked and "smoking" have corresponding meanings

- g. by the substitution for the definition of "tobacco product" of the following definition:

"tobacco product" means any product manufactured from tobacco and intended **[to be smoked]** for use by smoking, inhalation, chewing, sniffing or sucking;

- h. by the insertion after the definition of 'tobacco product ' of the following definition:

"trade mark" includes any trade mark whether or not it is registered or registerable as such and any recognisable variation thereof; and

- i. by the insertion after the definition of "trade mark" of the following definition:

"workplace" means any indoor or enclosed area in which employees perform the duties of their employment and includes any corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment.

Amendment of section 2 of Act 83 of 1993

2. Section 2 of the principal Act is hereby amended

- a. by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, **[after consultation with the Council for the Co-ordination of Local Government Affairs established by section 2 of the Promotion of Local Government Affairs Act, 1983 Act No.91 of 1983),]** by notice in the *Gazette* declare that [issue regulations whereby] the smoking of tobacco products in any public place or particular kinds of public places is prohibited or whereby the smoking of tobacco products in such public places may only take place on the conditions mentioned in the notice."

- b. by the substitution of subsection (2) of the following subsection:

"(2) The Minister may at the request of any, local authority, but subject to subsection (3), grant any or all of his or her powers contemplated in subsection (1) to such local authority."

- c. by the insertion after subsection (5) of the following subsections:

"(6) A local authority which has made regulations relating to the control of smoking in public places in terms of this Act shall have the power, duty and obligation to enforce the regulations in its area of jurisdiction.

"(7) A local authority which has not made regulations relating to the control of smoking in public places in terms of this Act shall have the power, duty and obligation to enforce any national regulation in connection therewith in its area of jurisdiction."

Substitution of section 3 of Act 83 of 1993

3. The following section is hereby substituted for Section 3 of the principal Act:

"Advertising, sponsorship, promotion and required information in respect of packages of tobacco products"

3. (1) No person shall:

- a. advertise or promote any tobacco product; or
b. display or use, otherwise than in private capacity, tobacco trade marks, logos, brand names or company names on-

(i) any article other than a tobacco product or a package or container in which a tobacco product is sold or shipped; or

(ii) for the purpose of advertising any organisation, service, activity or event.

(2) No person shall distribute, sell, offer for sale, or expose for sale any article that bears a trade mark of a tobacco product other than sold or shipped.

{3) A retailer of tobacco may post in accordance with the regulations signs at the point of sale that indicate the availability of tobacco products and their price.

(4) No person shall or import for subsequent sale any prescribed tobacco product, unless:

- a. on the package in which the tobacco product is sold is reflected, the prescribed warning concerning the health hazards incidental to the smoking of tobacco products; and

- b. the quantities of constituents present in the tobacco product concerned are stated on the package."

Insertion of section 3A in Act 83 of 1993

4. The following section is hereby inserted after section 3 of the principal Act;

"Maximum yields of tar and other constituents in a tobacco product.

3A. The Minister may, by notice in the *Gazette*, declare the permissible levels of tar, nicotine and other constituents which tobacco products may contain and the maximum yield of any such substance that may be obtained therefrom.

Amendment of section 4 of Act 83 of 1993

5. Section 4 of the principal Act is hereby amended

- a. by the deletion of subsection (2) and subsection (3).

Insertion of section 4A in Act 83 of 1993

6. The following section is hereby inserted after section 4 of the principal Act:

"Free distribution and reward prohibited

4A (1) No manufacturer, distributor, importer or retailer of a tobacco product shall for free, or at a reduced price, other than a normal trade discount-

- a. distribute any tobacco product; or
b. supply any tobacco product to any person for subsequent distribution.

(2) No person shall offer any gift or cash rebate or the right to participate in any contest, lottery or game to the purchaser of a tobacco product in consideration of the purchase thereof, or to any person in consideration of the furnishing of evidence of such a purchase."

Amendment of section 5 of Act 83 of 1993

7. Section 5 of the principal Act is hereby amended

- (a) by the substitution of subsection (1) of the following subsection:

"5. (1) The sale of tobacco products from vending machines shall be restricted to places in which sales from such machines are inaccessible to persons under the age of 16 years."

- (b) by the substitution of subsection (2) of the following subsection:

"(2) It shall be the responsibility of any person during such time as he or she is responsible for or has control of the premises in which any vending machine is kept to ensure that no person under the age of 16 years shall make use of such machine."

- (c) by the deletion of subsection (4).

Substitution of section 7 of Act 83 of 1993

8. The following section is hereby substituted for Section 7 of the principal Act:

"Offences and penalties

7. (1) Any. person who contravenes or fails to comply with any notice issued in terms of Section2 (1) shall be guilty of an offence and liable conviction to a fine of R200.

(2) Any person who contravenes or fail to comply with the provisions of section 4(1) or 5 shall be guilty of an offence and liable on conviction to a fine of R10 000.

(3) Any person who contravenes or fail to comply with the provisions of section 3 or 4A or any notice issued in terms of section 3A shall be guilty of an offence and liable on conviction to a fine of R200 000."

Extension of application of Act 83 of 1993

9. The Tobacco Products Control Act, 1993, and all, amendments thereof, shall apply throughout the Republic.

Short title

10. (1) This Act shall be called the Tobacco Products Control Amendment Act,1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may under section (1) be affixed in respect of different provisions of this Act.