

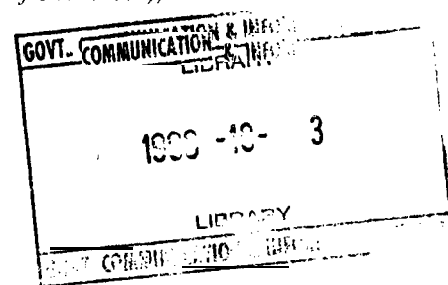
REPUBLIC OF SOUTH AFRICA

TOBACCO PRODUCTS CONTROL AMENDMENT BILL

(As amended by the Select Committee on Social Services (National Council of Provinces))

(MINISTER OF HEALTH)

[B 117B—98]



REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE BEHEER VAN TABAKPRODUKTE

(Soos gewysig deur die Gekose Komitee oor Maatskaplike Dienste (Nasionale Raad van Provinsies))

(MINISTER VAN GESONDHEID)

[W 117B—98]

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

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

To amend the Tobacco Products Control Act, 1993, so as to amend and insert certain definitions; to provide for the prohibition of advertising and promotion of tobacco products; to provide further, for the prohibition of advertising and promotion of tobacco products in relation to sponsored events; to prohibit the free distribution of tobacco products and the receipt of gifts or cash prizes in contests, lotteries or games to or by 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 in tobacco products; to increase fines; and to provide for matters connected therewith.

BE IT THEREFORE, ENACTED by the Parliament of the Republic of Sorrh Africa,
as follows:—

1. The following preamble shall be inserted in the Tobacco Products Control Act, 1993 (hereinafter referred to as the principal Act);

ACKNOWLEDGING that tobacco use—

is extremely injurious to the health of both smokers and non-smokers and warrants, in the public interest, a restrictive legislation;

is a widely accepted practice among adults, which makes it inappropriate to ban completely;

REALISING that the association of smoking with social success, business advancement and sporting prowess through the use of advertising and promotion has the particularly harmful effect of encouraging children and young people to take up smoking;

CONSIDERING that the extent of the effects of smoking on health calls for strong action to deter people from taking up smoking and to encourage existing smokers to give up smoking; and

RESOLVINGto align the health system with the democratic values of the Constitution and to enhance and protect the fundamental rights of citizens by discouraging the use, 20 promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death.”.

Amendment of section 1 of Act 83 of 1993

2. Section 1 of the principal Act is hereby amended—

- (u) 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]** drawn, still or moving picture, sign, symbol, 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 aimed at the public of a tobacco product manufacturer’s company name where the name or any part of the name is used as or is included in a tobacco product trade mark, and ‘advertise’ has a corresponding meaning;”;
- (b) by the insertion after the definition of “advertisement” of the following definition:
- “ ‘Constitution’ means the Constitution of the Republic of South Africa ;”;
- (c) by the substitution for the definition of “hazardous constituent” of the following definition:
- “ ‘constituent’, in relation to any tobacco product, means nicotine, 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 purposes of this Act;”;
- (d) by the substitution for the definition of “Director-General” of the following definition:
- “ ‘Director-General’ means the Director-General: **[National] Health [and Population Development];”;**
- (e) by the insertion after the definition of “Director-General” of the following definition:
- “ ‘employed’ or ‘employment’ means employed or employment as an employee as defined in section 1 of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);”;
- (f) by the substitution for the definition of “Minister” of the following definition:
- “ ‘Minister’ means the Minister of **[National] Health;**”;
- (g) 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;”;
- (h) 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 inhale, exhale, 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;”;
- (i) 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;”;
- (j) by the insertion after the definition of “tobacco product” of the following definition:
- ‘trade mark’ includes—
- (i) any mark whether registered or registrable for trade purposes or any recognised version thereof;
 - (ii) certification trade mark or collective trade mark; and
 - (iii) ‘trade mark’ as defined in section 1 of the Trade Marks Act, 1993 (Act No. 194 of 1993);”;

(k) by the insertion after the definition of “trade mark” of the following definition:

“ ‘workplace’ means—

- (i) any indoor or enclosed area in which employees perform the duties of their employment; and
- (ii) includes any corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment.”.

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Amendment of section 2 of Act 83 of 1993

3. Section 2 of the principal Act is hereby amended—

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(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] except where such instances in which the smoking of tobacco products in any public place ‘or particular kinds of public places **[mentioned in the notice]** is prohibited, **[or whereby]** the smoking of tobacco products in such public places may **[only]** take place only on the conditions mentioned in the notice.”;

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(b) by the substitution for 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:

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“(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 regulations in connection therewith in its area of jurisdiction.”.

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Substitution of section 3 of Act 83 of 1993

4. 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

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3. (1) No person shall—

- (a) advertise using tobacco trade marks, logos, brand names or company names used on tobacco products; or
- (b) use tobacco trade marks, logos, brand names or company names used on tobacco products for the purposes of advertising any organisation, service activity or event.

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(2) No manufacturer, importer, distributor or retailer of tobacco products shall—

- (a) organise or promote any organised activity that is to take place in whole or in part in the Republic;
- (b) make any financial contribution to any organised activity that is to take place, or is taking place, or has taken place in whole or in part in the Republic;

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(c) make any financial contribution to any person in respect of—

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- (i) the organisation or promotion of any organised activity in the Republic by that person;

- (ii) the participation, by that person, in any organised activity that is to take place, or is taking place in whole or in part, in the Republic;
- (3) For the purposes of subsections (1) and (2) organised activity refers to the use in the name of that activity of a tobacco product trade mark, logo, brand name or company name used on tobacco products. 5
- (4) A retailer of tobacco products may post in accordance with the regulations passed in relation to this Act, signs at the point of sale that indicate the availability of tobacco products and their price.
- (5) No person shall sell or import for subsequent sale any prescribed tobacco product, unless— 10
- (a) such product is in a package;
- (b) the package in which the tobacco product is sold bears the prescribed warning concerning the health hazards incidental to the smoking of tobacco products; and 15
- (c) the quantities of the constituents present in the tobacco product concerned are stated on the package.”.

Insertion of section 3A in Act 83 of 1993

5. The following section is hereby inserted after section 3 of the principal Act:

“Maximum yields of tar and other constituents in a tobacco product 20

3A. The Minister may, by notice in the *Gazette*, declare the maximum 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.”. 25

Amendment of section 4 of Act 83 of 1993

6. Section 4 of the principal Act is hereby amended by the deletion of subsection (2) and subsection (3).

Insertion of section 4A in Act 83 of 1993

7. The following section is hereby inserted after section 4 of the principal Act: 30

“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— 35

(a) distribute any tobacco product; or

(b) supply any tobacco product to any person for subsequent distribution.

(2) No person shall offer any gift, cash rebate or right to participate in any contest, lottery or game to the purchaser of a tobacco product, to any person in consideration of the purchase thereof, or the furnishing of evidence of such a purchase.”. 40

Amendment of section 5 of Act 83 of 1993

8. Section 5 of the principal Act is hereby amended—

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

“5. (1) The sale of tobacco products from vending machines shall be restricted to places in which purchases from such machines are inaccessible to persons under the age of sixteen years.”; 45

(b) by the substitution for 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 sixteen years makes use of any such machine.”;
 (c) by the deletion of subsection (4). 5

Substitution of section 7 of Act 83 of 1993

9. The following section is 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 section 2 (1) shall be guilty of an offence and liable on conviction to a fine of R200. 10

(2) Any person who contravenes or fails 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. 15

(3) Any person who contravenes or fails 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 and application of Act 83 of 1993

10. The Tobacco Products Control Act, 1993, and all amendments thereof shall apply 20 throughout the Republic.

Short title and commencement

11. (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*. 25

(2) Different dates may be fixed in respect of different provisions of this Act.

MEMORANDUM ON THE OBJECTS OF THE TOBACCO PRODUCTS CONTROL AMENDMENT BILL, 1998

1. INTRODUCTION

The Bill seeks to extend the application of the Tobacco Products Control Act, 1993 (Act No. 83 of 1993), hereinafter referred to as the “principal Act”, to the territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei and of the former self-governing territories.

2. IMPORTANT PROVISIONS OF THE BILL

- (a) In order to control smoking in public places, clause 2 provides a local authority with the power, duty and obligation to enforce the regulations relating to smoking in such places within its area of jurisdiction, whether such regulations are national or not.
- (b) Clause 3 prohibits the display or use of tobacco trade marks, logos, brand names or company names in relation to a sponsored event. The use of a tobacco trade mark for the purpose of advertising any organisation, service, activity or event is also prohibited. The prohibition does not relate to point of sale advertising provided the regulations are adhered to.
- (c) The distribution of free tobacco products and the offering of gifts or cash rebates or the right to participate in a contest, lottery or game in consideration of the purchase of a tobacco product is prohibited in clause 6.
- (d) It is proposed in clause 8 that the sale of tobacco products from vending machines be restricted to places which are inaccessible to persons under the age of 16 years. It is the responsibility of the person who has control of the premises where machines are kept to ensure that children do not make use of such machines.

3. CONSULTATION ON THE BILL

The following parties were consulted:

- * National Council Against Smoking
- * Cancer Association of South Africa
- * Heart Foundation
- * National Cancer Registry
- * Medical Research Council
- * Human Sciences Research Council
- * UCT School of Economics—Economics of Tobacco Control Project
- * NPPHCN
- * Tobacco Action
- * South African Medical Association
- * DENOSA
- * City of Cape Town
- * South Peninsula Metro Council
- * Freedom of Commercial Speech Trust
- * Tobacco Institute
- * Vending Machine Association
- * FEDHASA—Federated Hospitality Association of South Africa
- * All relevant government departments were consulted.

4. CONSTITUTION

The Bill was published for comment in terms of section 154(2) of the Constitution on 14 August 1998. Notice 1682 of 1988. Volume 398/No. 19158.

Responses: 112

Support: 80

Oppose: 27

Unsure: 2

Comments for changes: 14

5. PARLIAMENTARY **PROCESS**

The Department of Health and the State Law Advisers are of the opinion that the procedure established by section 76 of the Constitution should be followed with regard to this Bill.