

REPUBLIC
OF
SOUTH AFRICA



REPUBLIEK
VAN
SUID-AFRIKA

Government Gazette Staatskoerant

Vol. 398

PRETORIA, 14 AUGUST
AUGUSTUS 1998

No. 19158

GENERAL NOTICE

NOTICE 1682 OF 1998

DEPARTMENT OF HEALTH

TOBACCO PRODUCTS CONTROL AMENDMENT BILL, 1998

In terms of section 154(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the above-mentioned Bill is hereby published for public comment.

Any comment in this regard should be addressed to:

The Acting Director-General
Attention: Director: Health Promotion
Department of Health
Private Bag X828
PRETORIA
0001

Comments may also be transmitted to facsimile number (012) 3264373.

Please provide the name, telephone number and facsimile number of a person whom the Department could contact.

Comments must be received by 31 August 1998.

Dr A NSTALUBA
ACTING DIRECTOR-GENERAL

REPUBLIC OF SOUTH AFRICA

TOBACCO PRODUCTS CONTROL AMENDMENT ACT

(MINISTER OF HEALTH)

GENERAL EXPLANATORY NOTE:

[1 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, and by the insertion of a preamble therein.

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

Insertion of Preamble in Act 83 of 1993

1. The following Preamble is inserted in the Tobacco Products Control Act, 1993 (hereinafter referred to as the principal Act)

PREAMBLE

- (a) Whereas the following guiding principles are recognised in relation to the use, supply and advertising of tobacco:
- (i) Tobacco use is so injurious to the health of both smokers and non-smokers as to warrant restrictive legislation;
 - (ii) Tobacco use has adverse health effects even with infrequent use and there is no completely safe form of tobacco use;
 - (iii) Tobacco use is widely accepted practice amongst adults, which makes it inappropriate to ban completely;
 - (iv) The extent of the health effects of smoking requires strong action to deter people from taking up smoking and to encourage existing smokers to give up smoking
 - (v) The association of smoking with social success, business advancements and sporting prowess through the use of advertising and promotion has particularly harmful effect by encouraging children and young people to take up smoking; and
- (b) It has been resolved to discourage the use of tobacco in all its forms and to prohibit various types of 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 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”, 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 publicize 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 or trade mark where the name or trade mark or any part of that name or trade mark is used or is ~~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 part or recognizable variation thereof used on or in relation to a tobacco product ; 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

3. 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

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”

3. (1) No person shall-

(a) advertise, using any 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 purpose of advertising any organisation, service, activity or event;

(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 part in South Africa; or

- (b) Make any financial contribution towards any organised activity that is to take date, or is taking place, or has taken date, in whole or in part in South Africa: or
- (c) Make any financial contribution to any person in respect of-
- (i) The organisation or promotion by that person, of or
- (ii) The participation, by the person, in-
Any organised activity that is to take place, or is taking place, or has taken date, in whole or in part, in South Africa-

Where that organised activity involves the use, in the name of that activity, of a tobacco product trade mark, logo, brand name or company name used on tobacco products.

(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 sell or import for subsequent sale any prescribed tobacco product unless-

- (a) such product is in a package;
- (b) 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
- (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.

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.

6. 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

7. 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

8. 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, at such time as he is responsible for or in control of the premises in which any

vendina 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

9. 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 section 2 (1) shall be guilty of an offence and liable on 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.”.

Repeal of laws

10. The laws mentioned in the Schedule are hereby repealed to the extent to which those laws formed part of the legislation of the areas of the former-
- (a) Republics of Transkei, Boputhatswana, Venda and Ciskei; and
- (b) Self-governing territories of Lebowa, Gazankulu, QwaQwa, Kwazulu, KwaNdebele, and KaNgwane in terms of the Self-governing territories Constitution Act, 1971 (Act No. 21 of 1971)

Extension of application of Act 83 of 1993

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

CONTENTS

No.

Page Gazette
No. No.

GENERAL NOTICE

Health, Department of
General Notice

1882 Tobacco Products Control Amendment Bill, 1998: For comment1... 19158

printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Tel: (01 2) 334-4507, 334-4511, 334-4509, 334-4515
Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaat Sak X85, Pretoria, 0001
Tel: (01 2) 334-4507, 334-4511, 334-4509, 334-4515