

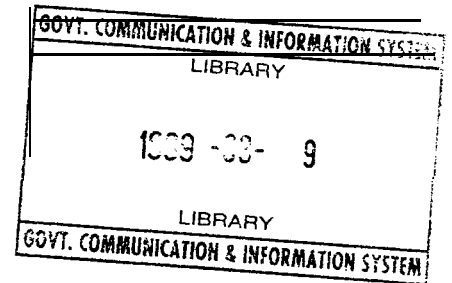
REPUBLIC OF SOUTH AFRICA

TOBACCO PRODUCTS CONTROL AMENDMENT BILL

(Referred back to the National Assembly by the President in terms of section 79 of the Constitution, and amended by the Portfolio Committee on Health (National Assembly))

(MINISTER OF HEALTH)

[B 117H—98]



REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE BEHEER VAN TABAKPRODUKTE

(Deur die President ingevolge artikel 70 van die Grondwet na die Nasionale Vergadering terugverwys, en gewysig deur die Portefeuljekomitee oor Gesondheid (Nasionale Vergadering))

(MINISTER VAN GESONDHEID)

[W 117H—98]

ISBN O 621290076

Amendment of section 1 of Act 83 of 1993

2. Section 1 of 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]** drawn, still or moving picture, sign, symbol, other visual image or message or audible message aimed at the public and 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 manufacturers 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, 1996 (Act No. 108 of 1996);’;”
- (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, 1997 (Act No. 75 of 1997);’;”
- (f) by the substitution for the definition of “Minister” of the following definition:
- “ ‘Minister. means the Minister of **[National] Health;**’;”
- (g) by the insertion after the definition of “officer” of the following definition:
- “ ‘organised activity’—
- | | |
|---|----|
| (a) means any activity or event— | 40 |
| (i) which the public attend or participate in: | |
| (ii) which is organised for the purposes of entertainment, sport or recreation or for educational or cultural purposes; and | |
| (iii) where a tobacco product. or brand name. trade mark, logo or company name in relation to a tobacco product, is used in the name of or portrayal of the activity or event; but | 45 |
| (b) excludes any private activity or event arranged by a manufacturer, importer, distributor or retailer of a tobacco product where only its <u>shareholders or its employees or their spouses or partners attend;</u> ”; | |
- (h) by the insertion after the definition of “prescribe’. of the following definition:
- “ ‘private dwelling’ means any part of—
- | | |
|---|----|
| (a) any room or apartment of a building or structure which is occupied as a residence; or | 50 |
| (b) any building or structure or outdoor living area which is accessory to, and used wholly or principally for, <u>residential purposes;</u> ”; | 55 |
- (i) 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;”;

- (j) 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.”: 5
- (k) 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.”: 10
- (l) 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 that is likely to be taken as, or confused with, that trade mark: 15
 (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);”: 20
- (m) by the insertion after the definition of “trade mark” of the following definition:
 “ ‘workplace’—
 (a) means any indoor or enclosed area in which employees perform the duties of their employment: and 25
 (b) includes any corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment; but
 (c) excludes any private dwelling, and any portion of an area mentioned in paragraph (a) specifically } designated by the employer as a smoking area and which complies with the prescribed requirements.”: 30

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)(a) The smoking of tobacco products in any public place is prohibited,
 (b) Notwithstanding the provisions of subsection (1)(a), the Minister may by notice in the *Gazette* declare specified public places permissible smoking areas, subject to any conditions that may be specified in such notices. 35
 (c) Notwithstanding the fact that a private dwelling is excluded from the definition of “workplace”, if a private dwelling is used for commercial child care activities or for schooling the smoking of tobacco products in such dwelling or on the terrain of such dwelling is prohibited, except in an area of the private dwelling which is specifically designated by the employer, owner, tenant or possessor as a smoking area and which complies with the prescribed requirements.”: 40 45
- (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.”: 50
- (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. 55
 (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.”.

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—** 5
- (a) advertise, including the use of 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. 10
- (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; 15
- (c) make any financial contribution to any person in respect of—
- (i) the organisation or promotion of any organised activity in the Republic by that person: 20
- (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) 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. 25
- (4) No person shall sell or import for subsequent sale any prescribed tobacco product, unless—
- (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 30
- (c) the quantities of the constituents present in the tobacco product concerned are stated on the package.
- (5) Notwithstanding the provisions of section 3, the Minister may, by regulations, provide for exemptions for unintended consequences or the phasing out of existing sponsorship or contractual obligations.’.. 35

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 40

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.’.. 45

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).

MEMORANDUM ON THE OBJECTS OF THE TOBACCO PRODUCTS CONTROL AMENDMENT BILL

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.

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- (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. 10
- (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; 15
- (c) make any financial contribution to any person in respect of—
- (i) the organisation or promotion of any organised activity in the Republic by that person; 20
- (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.
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- (a) **such** product is in a package;
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