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)

GOVT. COMMUNICATION & INFORMATION SYSTEM

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GOVT. COMMUNICATION & INFORMATION SYSTEM

[B 117H—98]

REPUBLIEK VAN SUID-AFRIKA

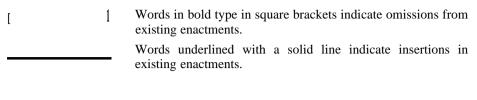
WYSIGINGSWETSONTWERP OP DIE BEHEER VAN TABAKPRODUKTE

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

(MINISTER VAN GESONDHEID)

[W 117H—98] ISBN 0 621290076

GENERAL EXPLANATORY NOTE:



\mathbf{BILL}

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.

B E IT THEREFORE. ENACTED by the Parliament of the Republic of South Africa, as follows:—

Insertion of Preamble in Act 83 of 1993

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

"PREAMBLE

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 may have 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

RESOLVING to 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, promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death:".

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Amendn	nent of section 1 of Act 83 of 1993	
	tion 1 of the principal Act is hereby amended—by the substitution for the definition of "advertisement." of the following	
(α)	definition:	
	" 'advertisement'. in relation to any tobacco product, means any [state-	5
	ment, 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,	10
	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	1.5
	name is used as or is included in a tobacco product trade mark, and	15
(b)	'advertise. has a corresponding meaning:"; by the insertion after the definition of 'advertisement'. of the following	
(0)	definition:	
	"'Constitution. means the Constitution of the Republic of South Africa. 1996 (Act No. 108 of 1996);";	20
(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	25
	purposes of this Act:'.;	
(<i>d</i>)	by the substitution for the definition of "Director-General of the following	
	definition: "'Director-General' means the Director-General: [National] Health [and	
	Population Development]:";	30
(e)		50
(6)	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);";	35
(<i>f</i>)	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'—	40
	(a) means any activity or event— (i) which the public attend or participate in:	40
	(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	45
	name of or portrayal of the activity or event; but	
	(b) excludes any private activity or event arranged by a manufacturer,	
	importer. distributor or retailer of a tobacco product where only its	
(h)	shareholders or its employees or their spouses or partners attend:": by the insertion after the definition of "prescribe". of the following definition:	50
(11)	"'privatedwelling' means any part of—	50
	(a) any room or apartment of a building or structure which is occupied	
	as a residence; or	
	(b) any building or structure or outdoor living area which is accessory	
	to. and used wholly or principally for. residential purposes;";	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;";	60

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'(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;":	g 5
$\frac{\text{meanings:}}{(k) \text{ by the substitution for the definition of "tobacco product" of the following}$	
definition: "'tobacco product' means any product manufactured from tobacco and	
intended [to be smoked] for use by smoking, inhalation, chewing, sniffing or sucking; ":	10
(1) 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	35
prohibited,	
(b) Notwithstanding the provisions of subsection (1)(a), the Minister may by notice in the <i>Gazette</i> declare specified public places permissible smoking areas. subject to any conditions that may be specified in such	
notices.	40
(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	45
employer. owner. tenant or possessor as a smoking area and which complies	
with the prescribed requirements.":	
(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	Γ.Ο
subsection (3), grant arty or all of his <u>or her</u> powers contemplated in	50
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.	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 5 3. (1) No person shall— (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. 10 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 in part in the Republic: 15 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;

- (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:

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- (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.
- (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
- (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.'..

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.".

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:

"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, cash rebate or right to participate in any contest, lottery or game, to any person in consideration of the purchase of a tobacco product, or 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 for subsection (1) of the following subsection:

 .'(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.";

 (b) by the substitution for subsection (2) of the following subsection:
 - (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 20 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).

Substitution of section 7 of Act 83 of 1993

9. The following section is substituted for section 7 of the principal Act:

"Of fences 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 not exceeding R200 or to such penalties as may be determined.
- (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 not exceeding R 10000 or to such imprisonment as may be determined.
- (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 not exceeding R200 000 or to such imprisonment as may be determined.".

Extension and application of Act 83 of 1993

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

Short title and commencement

- **11. (1)** This Act shall be called the Tobacco Products Control Amendment Act, 1999, and shall come into operation on a date fixed by the President by proclamation in the **45** *Gazette*.
 - (2) Different dates may be fixed in respect of different provisions of this Act.

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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, Vends 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.

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 15 place, or is taking place, or has taken place in whole or in part in the Republic; (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 25 regulations passed in relation to this Act. 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; 30 (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 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 35 regulations, provide for exemptions for unintended consequences or the phasing out of existing sponsorship or contractual obligations.".

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."

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).