

REPUBLIC OF SOUTH AFRICA

TOBACCO PRODUCTS CONTROL AMENDMENT BILL

(As amended by the Portfolio Committee on Health (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF HEALTH)

[B 24B—2006]

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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, so as to define certain expressions and to amend certain definitions; to provide anew for the control over the smoking of tobacco products; to make provision for standards in respect of the manufacturing and export of tobacco products; to extend the Minister's power to make regulations; and to increase penalties; 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 1993, as amended by section 2 of Act 12 of 1999

1. Section 1 of the Tobacco Products Control Act, 1993 (hereinafter referred to as the principal Act), is hereby amended by the— 5

(a) insertion after the definition of “advertisement” of the following definition: 5
 “**‘composition’** means the content, arrangement or combination of substances included in the processing and manufacture of a tobacco product;”;

(b) insertion after the definition of “Director-General” of the following definition: 10
 “**‘emission’** means any substance that is produced when a tobacco product is used;”;

(c) insertion after the definition of “employed” or “employment” of the following definition: 15
 “**‘ingredient’** means any product component, material used to manufacture such component, residual substance from agricultural practices, storage and processing and substances that can migrate from packing into the product;”;

(d) insertion after the definition of “local authority” of the following definition: 20
 “**‘manufacturer’** where the manufacturer is—
 (a) a company, includes its holding company or any subsidiary and any subsidiary of its holding company;
 (b) an entity other than a company, includes an entity that controls or is controlled by such manufacturer or that is controlled by the same entity that controls such manufacturer;”;

- (e) substitution for the definition of “officer” of the following definition:
 “**‘officer’** means an officer in the Department of [National] Health [and Population Development as mentioned in section 5];”;
- (f) insertion after the definition of “private dwelling” of the following definition:
 “**‘public conveyance’** includes transporting people by means of any commercial or chartered aircraft, ship, boat, train, bus, mini-bus or taxi;”;
- (g) substitution for the definition of “public place” of the following definition:
 “**‘public place’** means any indoor [or], enclosed or partially enclosed area which is open to the public [or any part of the public], and includes a workplace, a club and a public conveyance;”;
- (h) substitution for the definition of “tobacco product” of the following definition:
 “**‘tobacco product’** means [any] a product [manufactured from] containing tobacco [and intended for use by smoking, inhalation, chewing, sniffing or sucking] that is intended for human consumption, and includes, but is not limited to, any device, pipe, water pipe, papers, tubes, filters, portion pouches or similar objects manufactured for use in the consumption of tobacco;”;
- (i) substitution in the definition of “workplace” for paragraph (a) of the following paragraph:
 “(a) means any indoor [or], enclosed or partially enclosed area in which employees perform the duties of their employment; and”.

Substitution of section 2 of Act 83 of 1993, as amended by section 3 of Act 12 of 1999

2. The following section is hereby substituted for section 2 of the principal Act:

“Control over smoking of tobacco products

2. (1) (a) No person may smoke any tobacco product in—
- (i) a public place;
 - (ii) any area within a prescribed distance from a window of, ventilation inlet of, doorway to or entrance into a public place;
 - (iii) any motor vehicle when a child under the age of 12 years is present in that vehicle; or
 - (iv) any place contemplated in subsection (3).
- (b) Notwithstanding paragraph (a), the Minister may permit smoking in the prescribed portion of a public place, subject to any prescribed condition.
- (c) Notwithstanding the fact that a private dwelling is excluded from the definition of ‘workplace’, no person may smoke any tobacco product in a private dwelling if that private dwelling is used for any commercial childcare activity, or for schooling or tutoring.
- (2) The owner of or person in control of a place or an area contemplated in subsection (1)(a), or an employer in respect of a workplace, shall ensure that no person smokes in that place or area.
- (3) The Minister may prohibit the smoking of any tobacco product in any prescribed outdoor public place, or such portion of an outdoor public place as may be prescribed, where persons are likely to congregate within close proximity of one another or where smoking may pose a fire or other hazard.
- (4) The owner of or person in control of a place or area contemplated in subsection (1)(a), or employer in respect of a workplace, shall display the prescribed signs and shall make the prescribed public announcements in order to inform any person who enters or who is in or on such place or area of any prohibition on smoking.
- (5) An employer must ensure that—
- (a) employees may object to smoking in the workplace in contravention of this Act without retaliation of any kind;
 - (b) employees who do not want to be exposed to tobacco smoke in the workplace are not so exposed;
 - (c) it is not a condition of employment, expressly or implied, that any employee is required to work in any portion of the workplace where smoking is permitted; and

(d) employees are not required to sign any indemnity for working in any portion of the workplace where smoking is permitted.

(6) The owner of or person in control of a place or area contemplated in subsection (1)(a), or employer in respect of a workplace, shall ensure that no person under the age of 18 years is present in any portion of the workplace where smoking is permitted or in the area within a public place contemplated in subsection (1)(b) in or on which smoking is permitted.

(7) Sections 80 to 89 of the National Health Act, 2003 (Act No. 61 of 2003), apply with the necessary changes to this section.”.

Substitution of section 3A of Act 83 of 1993, as inserted by section 5 of Act 12 of 1999

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

“Standards for manufacturing and export of tobacco products

3A. (1) No person shall manufacture a tobacco product unless it complies with such standards as may be prescribed.

(2) Every manufacturer of a tobacco product shall provide such information about the product and its emissions to the Minister and the public as may be prescribed, in the prescribed manner and within the prescribed time.

(3) (a) No person shall export a tobacco product from the Republic unless the tobacco product meets the product and testing standards of the country of final destination.

(b) If no such standards exist in the country of final destination, the provisions of this section apply.”.

Amendment of section 6 of Act 83 of 1993, as amended by section 9 of Act 157 of 1993

4. Section 6 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) anything that must or may be prescribed in terms of this Act;”;

(b) the substitution in subsection (1) for paragraphs (c), (d) and (e) of the following paragraphs, respectively:

(c) the location, content, size and format of any sign required in terms of this Act;

(d) the standards that a tobacco product must comply with, including—
(i) the amounts of substances that may be contained in the product or its emissions;

(ii) substances that may or may not be added to the product;

(iii) the ignition propensity of cigarettes; and

(iv) product design and composition;

(e) methods to assess conformity, and methods of testing and measuring compliance, with any prescribed standard;

(f) subject to Chapter 2 of the Constitution of the Republic of South Africa, 1996, any information that a manufacturer of a tobacco product must submit to the Minister and to the public, including information in respect of—

(i) research conducted into a tobacco product by a manufacturer or by a person who conducted research paid for in whole or in part by a tobacco manufacturer;

(ii) the quantity of a tobacco product manufactured;

(iii) marketing expenditure; and

(iv) information on product composition, ingredients, hazardous properties and emissions; and

(g) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.”.

Insertion of section 6A in Act 83 of 1993

5. The following section is hereby inserted in the principal Act after section 6:

“Exemptions

6A. The Minister may by notice in the *Gazette* exempt any tobacco product from a provision of this Act on such conditions as the Minister may determine in the notice, provided that it is in the public interest for the particular tobacco product to be so exempted.”. 5

Substitution of section 7 of Act 83 of 1993, as substituted by section 9 of Act 12 of 1999

6. The following section is hereby substituted for section 7 of the principal Act: 10

“Offences and penalties

7. (1) Any person who contravenes or fails to comply with section 2(2), (4) or (6), or fails to comply with any [notice issued in terms of] condition contemplated in section 2(1)(b), shall be guilty of an offence and liable on conviction to a fine not exceeding [R200 or to such penalties as may be determined] R50 000. 15

(2) Any person who contravenes or fails to comply with [the provisions of] section 2(5), 4(1) or 5, or contravenes or fails to comply with any regulation made in terms of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding [R10 000 or to such imprisonment as may be determined] R100 000. 20

(3) Any person who contravenes or fails to comply with the provisions of section 3, 3A 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] R1 000 000. 25

(4) Any person who contravenes or fails to comply with section 2(1) shall be guilty of an offence and liable on conviction to a fine not exceeding R500.”.

Substitution of Preamble to Act 83 of 1993

7. The following Preamble is hereby substituted for the Preamble to the principal Act: 30

“Preamble

ACKNOWLEDGING that tobacco use—

- is extremely injurious to the health of [both] smokers, [and] non-smokers and other users of tobacco products;
- has caused widespread addiction in society; 35
- [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] the use of tobacco products 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] use tobacco products; 40

CONSIDERING that the extent of the harmful effects of [smoking] the use of tobacco products on health calls for strong action to deter people, especially the youth, from [taking up smoking] using tobacco products, to protect non-smokers from exposure to tobacco smoke and to encourage existing users of tobacco products [smokers] to [give up smoking] quit; and 45

RESOLVING to align the health system with the democratic values of the Constitution and the World Health Organisation’s Framework Convention on Tobacco Control, 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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Transitional arrangements

8. Any notice or regulation issued by the Minister prior to the coming into operation of this Act shall remain in force until amended, repealed or replaced by a notice or regulation made by the Minister in terms of the principal Act.

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Short title and commencement

9. This Act is called the Tobacco Products Control Amendment Act, 2007, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE TOBACCO PRODUCTS CONTROL AMENDMENT BILL

1. PURPOSE OF BILL

The Bill seeks to amend the Tobacco Products Control Act, 1993 (Act No. 83 of 1993) (“the Act”), to bring it in line with the World Health Organisation Framework Conventions on Tobacco Control, to which South Africa is a signatory. The Bill also intends to close loopholes that exist in the current legislation. These loopholes are exploited by the tobacco industry and make prosecutions for contraventions of the Act very difficult.

2. OBJECTS OF BILL

2.1 The Bill seeks to amend the definitions of “officer”, “organised activity”, “public place”, “tobacco product” and “workplace”. The Bill also seeks to introduce definitions for “brand element”, “composition”, “emission”, “ingredient”, “manufacturer” and “public conveyance”.

2.2 The Bill further seeks to—

- (a) amend the section dealing with the “Control over smoking of tobacco products” by restricting or prohibiting smoking in certain outdoor places and public places;
- (b) set standards for the manufacturing and export of tobacco products;
- (c) amend the regulations section empowering the Minister to prescribe the standards that a tobacco product must comply with and information that a manufacturer of a tobacco product must submit to the Minister; and
- (d) increase the fine for contravening the provisions of the Act so as to deter people who are trying to circumvent the provisions or are not complying with the provisions of the Act.

2.3 The Bill contains the transitional arrangements necessary for its application.

2.4 The Bill also proposes amendments to the preamble so as to amongst other things insert the World Health Organisation Framework Convention on Tobacco Control.

3. CONSULTATION

The Department of Health consulted—

- British American Tobacco;
- Department of Agriculture and Land Affairs;
- Department of Finance;
- Department of Justice and Constitutional Development;
- Department of Provincial and Local Government;
- Department of Trade and Industry;
- Director of Public Prosecutions;
- South African Police Service; and
- the tobacco industry.

4. FINANCIAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Health are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.