

TOBACCO PRODUCTS CONTROL ACT 83 OF 1993

[ASSENTED TO 23 JUNE 1993]

[DATE OF COMMENCEMENT: 1 FEBRUARY 1994]

(English text signed by the State President)

as amended by

General Law Fifth Amendment Act 157 of 1993
Tobacco Products Control Amendment Act 12 of 1999
Tobacco Products Control Amendment Act 23 of 2007
Tobacco Products Control Amendment Act 63 of 2008

Regulations under this Act

LABELLING, ADVERTISING AND SALE OF TOBACCO PRODUCTS

MAXIMUM PERMISSIBLE YIELD OF TAR, NICOTINE AND OTHER CONSTITUENTS IN TOBACCO PRODUCTS

POINT OF SALE OF TOBACCO PRODUCTS

REGULATIONS RELATING TO PROVISION FOR EXEMPTION FOR UNINTENDED CONSEQUENCES AND THE PHASING OUT OF EXISTING SPONSORSHIP OR CONTRACTUAL OBLIGATIONS

SMOKING OF TOBACCO PRODUCTS IN PUBLIC PLACES

ACT

To prohibit or restrict smoking in public places; to regulate the sale and advertising of tobacco products in certain respects and to prescribe what is to be reflected on packages; and to provide for matters connected therewith.

Preamble

ACKNOWLEDGING that tobacco use-

- is extremely injurious to the health of smokers, non-smokers and other users of tobacco products;
- has caused widespread addiction in society;
- warrants, in the public interest, a restrictive legislation;

REALISING that the association of the use of tobacco products with social success, business advancement and sporting prowess through advertising and promotion may have the particularly harmful effect of encouraging children and young people to use tobacco products;

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

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;

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

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1 Definitions

In this Act, unless the context otherwise indicates-

'advertisement', in relation to any tobacco product-

- (a) means any commercial communication or action brought to the attention of any member of the public in any manner with the aim, effect or likely effect of-
 - (i) promoting the sale or use of any tobacco product, tobacco product brand element or tobacco manufacturer's name in relation to a tobacco product; or
 - (ii) being regarded as a recommendation of a tobacco product;
- (b) includes product placement; and
- (c) excludes commercial communication between a tobacco manufacture or importer and its trade partners, business partners, employees and share holders and any communications required by law,

and **'advertise'** has a corresponding meaning;

'brand element' includes the brand name, trade mark, trade name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, print, typeface, recognisable colour or pattern of colours, or any other symbol of product identification, that is likely to be taken as or confused with any brand of tobacco product designed to promote tobacco use;

'Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

'composition' means the content, arrangement or combination of substances included in the processing and manufacture of a tobacco product;

'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;

'Director-General' means the Director-General: Health;

'emission' means any substance that is produced when a tobacco product is used;

'employed' or **'employment'** means employed or employment as an employee as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act 75 of 1997);

'importer' means any person who brings, or attempts to bring, a tobacco product into the Republic for the purposes of selling that product, and **'import'** has a corresponding meaning;

'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;

'local authority' means any institution or body established by or under any law with a view to performing local government functions in respect of a particular area or region;

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'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;

'Minister' means the Minister of Health;

'nicotine' means nicotine alkaloids;

'officer' means an officer in the Department of Health;

'organised activity'-

- (a) means any activity or event-
 - (i) which any member of the public attends or in which he or she participates;
 - (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 to promote tobacco use; but
- (b) excludes any event arranged by a manufacturer, importer, distributor or retailer of a tobacco product where only its shareholders or its employees or their spouses or partners attend;

'package' means the container, receptacle or wrapper in which tobacco products are sold, supplied or distributed at wholesale or at retail;

'prescribe' means prescribe by regulation under this Act;

'private dwelling' means any part of-

- (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;

'product placement' means the depiction of, or reference to, a tobacco product or brand element in a broadcast programme, film, video recording, telecast or other electronic medium for which the producer, or any other person associated with the broadcast programme, film, video recording, telecast or other electronic medium, receives payment in cash or otherwise;

'promotion' is the practice of fostering awareness of and positive attitudes towards a tobacco product, brand element or manufacturer for the purposes of selling the tobacco product or encouraging tobacco use, through various means, including direct advertisement, incentives, free distribution, entertainment, organised activities, marketing of brand elements by means of related events and products through any public medium of communication including cinematographic film, television production, radio production or the internet, and **'promote'** has a corresponding meaning;

'public conveyance' includes transporting people by means of any commercial or chartered aircraft, ship, boat, train, bus, mini-bus or taxi;

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'public place' means any indoor, enclosed or partially enclosed area which is open to the public, and includes a workplace and a public conveyance:

'smoke' means to inhale, exhale, hold or otherwise have control over an ignited tobacco product, weed or plant, and **'smoked'** and **'smoking'** have corresponding meanings;

'tar' means the anhydrous and nicotine-free condensate of the smoke of a tobacco product;

'this Act' includes a regulation made under this Act; and

'tobacco product' means a product containing tobacco 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;

'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;
- (ii) certification trade mark or collective trade mark; and
- (iii) 'trade mark' as defined in section 1 of the Trade Marks Act, 1993 (Act 194 of 1993);

'workplace'-

- (a) means any indoor, enclosed or partially enclosed area in which employees perform the duties of their employment; and
- (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.

2 Control over smoking of tobacco products

(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 61 of 2003), apply with the necessary changes to this section.

3 Advertising, sponsorship, promotion, distribution, display and information required in respect of packaging and labelling of tobacco products

(1) (a) No person shall advertise or promote, or cause any other person to advertise or promote, a tobacco product through any direct or indirect means, including through sponsorship of any organisation, event, service, physical establishment, programme, project, bursary, scholarship or any other method.

(b) A commercial communication between a tobacco manufacturer or importer and its trade partners, business partners, employees and share holders, must contain no other information except for factual information about the tobacco product, its characteristics, its availability or price, pictures of the tobacco products, the component parts and their packaging.

(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;
- (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;
 - (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 manufacturer or importer of a tobacco product may make a charitable financial contribution or sponsorship, provided that such contribution or sponsorship is not for the purpose of advertisement.

(4) [Sub-s. (4) omitted by s. 2 of Act 63 of 2008.]

(5) Notwithstanding the provisions of subsections (1), (2) and (3), the Minister may prescribe exemptions for unintended consequences or the phasing out of existing sponsorship or contractual obligations.

(6) No person shall package or label a tobacco product in any way that is false, misleading, deceptive or likely to create any erroneous, deceptive or misleading impression about its characteristics, properties, health effects, toxicity, composition, merit, safety, hazards or emissions, including any term, descriptor, trade mark, figurative or other sign that directly or indirectly creates the impression that a particular tobacco product is less harmful than another tobacco product.

(7) No person shall manufacture for sale in the Republic, import for subsequent sale or sell a tobacco product-

- (a) unless the tobacco product is packaged in the prescribed manner; and
- (b) in a package or containing a label that contains false or misleading information or that is calculated to deceive the user of such product.

(8) A wholesaler shall display a tobacco product at his or her place of business in the prescribed manner.

(9) A retailer shall display-

- (a) a notice in the prescribed manner in his or her place of business that contains the prescribed information regarding any tobacco product available at his or her place of business; and
- (b) a tobacco product at his or her place of business in the prescribed manner and in such a way that no person shall be able to handle the tobacco product before paying for it.

(10) No person shall sell or offer to sell tobacco products at retail, unless the prescribed notices are displayed.

(11) This section must not be construed as limiting, amending, repealing or otherwise altering any legal obligation or liability in terms of any other law to warn consumers of the risks of using a tobacco product which a manufacturer, importer or retailer is bound by.

3A Standards for manufacturing, importing and export of tobacco products

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

(2) Every manufacturer and importer 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.

4 Prohibitions in respect of tobacco products

(1) No person shall sell or supply any tobacco product to any person under the age of 18 years.

(2) The owner or person in charge of any business shall ensure that no person under the age of 18 years in his or her employ or under his or her control, as the case may be, shall sell or offer to sell any tobacco product on the business premises.

(3) No person may sell or supply any confectionary or toy that resembles or is intended to represent any tobacco product.

(4) No person shall sell or offer to sell tobacco products in-

(a) any health establishment contemplated in section 1 of the National Health Act, 2003 (Act 61 of 2003), including any pharmacy; and

(b) any place where a person under the age of 18 years receives education or training.

(5) (a) No person shall sell, offer to sell, supply, distribute or buy any tobacco product through the postal services, the internet or any other electronic media.

(b) The prohibition contained in paragraph (a) does not apply to any commercial communication between a tobacco manufacturer or importer and its trade partners, business partners, employees and shareholders.

(6) Subject to section 252A of the Criminal Procedure Act, 1977 (Act 51 of 1977), the Director-General may authorise in writing any person or class of persons to monitor compliance with this section in the prescribed manner.

4A Free distribution and reward prohibited

(1) No manufacturer, distributor, importer or retailer of a tobacco product, or any person or agent acting on behalf of a manufacturer, distributor, importer or retailer, 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 or attend any contest, lottery or game, or any sporting, cultural, social or recreational event, to any person in consideration of the purchase of a tobacco product, or the furnishing of evidence of such a purchase, or the confirmation of use of a tobacco product.

5 Restrictions on use of vending machines

(1) No person shall place a vending machine containing tobacco products in any indoor or outdoor location, other than in the specified public place which has been declared by the Minister under section 2 (1) (b).

- (1A) A person who offers a tobacco product for sale by way of a vending machine shall-
- (a) not use such vending machine for the sale of anything other than a tobacco product; and
 - (b) display a notice in the prescribed manner on the vending machine that contains the prescribed information regarding any tobacco product available for sale in that vending machine.

(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 18 years makes use of any such machine.

(3) The Director-General may in writing direct the owner of the vending machine in question or the person in control thereof-

- (a) to take such precautionary measures as are specified in the directive to prevent the vending machine being used by persons under the age of 18 years; or
- (b) to remove the vending machine from the premises within the period specified in the directive.

6 Regulations

(1) The Minister may make regulations regarding-

- (a) anything that must or may be prescribed in terms of this Act;
- (b) the signs in respect of tobacco products and the information that must be displayed at points of sale and on vending machines, including-
 - (i) health warnings that must appear on the signs;
 - (ii) size and format of the signs;
 - (iii) location of the signs; and
 - (iv) the legal age at which tobacco products may be purchased.
- (bA) information that must be displayed on a package containing a tobacco product and on an enclosed leaflet, picture or pictogram, including-
 - (i) information about the product and its emissions;
 - (ii) health hazards and health effects arising from the use of the product or from its emissions;
 - (iii) other health-related messages such as advice on how to stop smoking;
 - (iv) information that may not appear on packages; and
 - (v) the descriptors, package design characteristics, graphics or terms considered to be false, misleading, deceptive or likely to create any erroneous impression;
- (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 or importer 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 or imported, as the case may be;
 - (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.

[NB: Sub-s. (2) has been deleted by s. 7 (d) of the Tobacco Products Control Amendment Act 63 of 2008]

(3) The Minister shall, not less than three months before issuing any regulation under this Act, cause a draft of the regulation to be published in the *Gazette*, together with a notice declaring his intention to issue such a regulation and inviting interested persons to furnish him with any comments thereon or representations in connection therewith within a specified period.

(4) The provisions of subsection (3) shall not apply in respect of-

- (a) a regulation which, after the provisions of the said subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by him in pursuance of the notice published in terms of the said subsection;
- (b) any regulation in respect of which the Minister is of the opinion that it is in the public interest that it be issued without delay.

6A Exemptions

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.

7 Offences and penalties

- (1) Any person who contravenes or fails to comply with section 2 (2), (4) or (6), or fails to comply with any condition contemplated in section 2 (1) (b), shall be guilty of an offence and liable on conviction to a fine not exceeding R50 000.
- (2) Any person who contravenes or fails to comply with section 2 (5), 3 (8), (9) (a) or (b) or (10), 4 (1), (2), (3), (4) (a) or (b) or (5) 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 R100 000.
- (3) Any person who contravenes or fails to comply with section 3 (1), (2), (3), (6), (7) (a) or (b), 3A, or 4A shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 000.
- (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.

8 Short title and commencement

(1) This Act shall be called the Tobacco Products Control Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may under subsection (1) be fixed in respect of different provisions of this Act.