

STATE PRESIDENT'S OFFICE

No. 1156.  
2 July 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:-

No. 83 of 1993: Tobacco Products Control Act, 1993.

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.

(English text signed by the State President.)

(Assented to 23 June 1993.)

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

Definitions

1. In this Act, unless the context otherwise indicates-

- (i) "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 to promote the sale of such tobacco product or encourage the use thereof or draw attention to the nature, properties, advantages or uses thereof, and "advertise" has a corresponding meaning; (i)
- (ii) "Director-General" means the Director-General: National Health and Population Development; (iii)
- (iii) "hazardous constituent", in relation to any tobacco product, means nicotine and tar; (iv)
- (iv) "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; (x)
- (v) "Minister" means the Minister of National Health; (vi)
- (vi) "nicotine" means nicotine alkaloids; (vii)
- (vii) "officer" means an officer in the Department of National Health and Population Development mentioned in section 4;

- (ii)
- (viii) "package" means any packing, carton, wrapping or any other container in which tobacco products are generally sold by retail; (ix)
- (ix) "prescribe" means prescribe by regulation under this Act; (xiv)
- (x) "public place" means any indoor area which is open to the public or any part of the public and includes a public conveyance; (viii)
- (xi) "smoke" includes sniff, suck or chew a tobacco product, and also have control over any ignited tobacco product or any device containing an ignited tobacco product; (xi)
- (xii) "tar" means the anhydrous and nicotine-free condensate of the smoke of a tobacco product; (xiii)
- (xiii) "this Act" includes a regulation made under this Act; (v) and
- (xiv) "tobacco product" means any product manufactured from tobacco and intended to be smoked. (xii)

#### Control over smoking of tobacco products

2. (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 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.

(2) The Minister may at the request of any local authority, but subject to subsection (3), grant any or all of his powers contemplated in subsection (1) to such local authority.

(3) A power contemplated in subsection (1) shall not be granted to a local authority under subsection (2) in respect of-

- (a) a public place owned by the State or which is occupied by officers or employees in the employment of the State; or
- (b) such other public places or particular kinds of public places as the Minister may determine by notice in the Gazette.

(4) When a local authority issues regulations by virtue of subsection (2), it shall do so by notice in the Official Gazette.

(5) The Minister may issue regulations prescribing conditions to which the exercise of a power by a local authority in terms of subsection (2) shall be subject.

#### Required information in respect of advertisements and packages of tobacco products

3. (1) No person shall advertise or sell any prescribed tobacco product, unless-

(a) (i) the advertisement contains; or

(ii) 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

(b) the quantities of the hazardous constituents present in the tobacco product concerned are stated in the advertisement or on the package.

(2) Except in so far as the provisions of subsection (1)(a)(i) and (b) relate to television, the Minister may in writing exempt the holder of a broadcasting licence as defined in section 1 of the Radio Act, 1952 (Act No. 3 of 1952), from the said provisions, on condition that such holder informs the public of the health hazards incidental to the smoking of tobacco products and subject to such further conditions as the Minister may determine.

Prohibition of sale of tobacco products to persons under age of 16 years

4. (1) No person shall sell or supply any tobacco product to any person under the age of 16 years, whether for his personal use or not.

(2) It shall be a sufficient defence to any charge in terms of subsection (1) if it is proved that the accused believed upon reasonable grounds that the person concerned at the time of the commission of the act charged was older than 16 years.

(3) If it is in any prosecution for a contravention of subsection (1) alleged that any person is according to appearance under the age of 16 years, such person shall be deemed to be under the said age until the contrary or the defence mentioned in subsection (2) is proved.

Restrictions on use of vending-machines

5. (1) The Director-General may in writing empower any officer to enter any premises where he has reasonable grounds to suspect that a vending-machine for the sale of tobacco products is kept, to determine whether the provisions of section 4(1) are being contravened.

(2) If the officer, after the conclusion of such investigation as he may consider necessary, is of the opinion that section 4(1) is being contravened by means of a vending-machine referred to in subsection (1), he shall notify the Director General accordingly.

(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 direction to prevent the vending-machine being used by persons under the age of 16 years; or

(b) to remove the vending-machine from the premises within the period specified in the direction.

(4) The powers and duties of an officer may within the area of jurisdiction of a local authority be exercised or performed by an officer of such local authority authorized thereto by such local authority.

#### Regulations

6. (1) The Minister may make regulations regarding-
- (a) the manner and form in which information contemplated in section 2 is to be reflected on the package of a tobacco product or in which it is to appear in any advertisement of such product;
  - (b) the manner or method of determining the quantities of hazardous constituents in tobacco products;
  - (c) the properties of a tobacco product, the claims in respect of such product and the representations in respect of the use thereof that may not appear in any advertisement;
  - (d) the returns, reports and other information to be furnished to the Director-General by manufacturers and importers of tobacco products;
  - (e) any other matter required or permitted to be prescribed in terms of a provision of this Act to achieve the objects of this Act.

(2) Regulations made under subsection (1)(b) may prescribe for the determination of the quantities of hazardous constituents in tobacco products any manner or method set out in a publication which in the opinion of the Minister is generally recognized as authoritative.

(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.

#### Offences and penalties

7. Any person who-
- (a) contravenes or fails to comply with any notice issued in terms of section 2(1);
  - (b) contravenes a provision of section 3(1) or 4(1);
  - (c) refuses or fails to comply with a direction imposed in terms of section 4(3); or

(d) contravenes or fails to comply with any regulation issued under section 5(1) (d), shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

Short title and commencement

8. (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.