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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

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

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 12 of 1999: Tobacco Products Control Amendment Act, 1999.

No. 12 van 1999: Wysigingswet op die Beheer van Tabakprodukte, 1999.

Act No. 12, 1999 TOBACCO PRODUCTS CONTROL AMENDMENT ACT, 1999

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.

(English text signed by the President.)
(Assented to 14 April 1999.)

ACT

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.

BE 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;”.

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 manufacturer’s 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—
- (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
- (b) excludes any private activity or 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;”;
- (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
- (b) any building or structure or outdoor living area which is accessory to, and used wholly or principally for, residential purposes;”;
- (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;”;

Act No. 12, 1999 TOBACCO PRODUCTS CONTROL AMENDMENT ACT, 1999

- (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. 35
 (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. 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 employer, owner, tenant or possessor as a smoking area and which complies with the prescribed requirements.” 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— 20
- (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 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).

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— 5
 (a) distribute any tobacco product; or
 (b) supply any tobacco product to any person for subsequent distribution. 10
 (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: 15
“(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: 20
“(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 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:

“Offences 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. 30
 (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 R10 000 or to such imprisonment as may be determined. 35
 (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 *Gazette*. 45

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