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REPUBLIC OF SOUTH AFRICA

TOBACCO PRODUCTS CONTROL AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary
of Bill published in Government Gazette No. of) (The English text is the
official text of the Bill)*

(MINISTER OF HEALTH)

[B - 2006]

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.
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B I L L

To amend the Tobacco Products Control Act, 1993, so as to amend certain definitions and to define certain expressions; to amend the provision empowering the Minister to make regulations; to prohibit and restrict the smoking of tobacco products in specified outdoor ~~public spaces; to prohibit~~ the presence of children in permissible smoking areas; to prohibit the sale of tobacco products at specified institutions; to restrict the display of tobacco products at retailers; to prohibit the use of misleading or deceptive descriptions on packaging of tobacco products; to provide for the regulation of standards on imported tobacco products; to prohibit and restrict sales of tobacco products to and by persons under the age of 18 years; to restrict tobacco sales by means of vending machines; to increase the penalties; and to provide for matters connected therewith.

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

Amendment of Preamble

1. The Preamble of the Tobacco Products Control Act, 1993 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the Preamble of the following:

"Preamble

ACKNOWLEDGING that tobacco use—

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

CONSIDERING that the extent of the harmful effects of **[smoking]** the use of

tobacco on health calls for strong action to deter people, especially youth, from taking up [smoking] tobacco use, to protect non-smokers from exposure to tobacco smoke pollution, and to encourage existing users of tobacco products [smokers] to [give up smoking] quit; and

RESOLVING to align the health system with the democratic values of the Constitution and the World Health Organisations 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;".

Amendment of section 1 of Act 83 of 1993

2. Section 1 of the principal Act, is hereby amended by the—
 - (a) substitution for the definition of "advertisement" of the following definition:

" **'advertisement'**, in relation to any tobacco product means any commercial communication or action brought to the notice of any member of the public in any manner, with the aim, effect, or likely effect of—

 - (a) promoting the sale or use of tobacco products, or
 - (b) creating an awareness of a tobacco product, or tobacco product trademark, or brand element, or tobacco manufacturer and includes product placement [drawn, still or moving picture,

sign, symbol, other visual image or message or audible message aimed at the public and designed to promote or publicise a tobacco product or 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 name is used as or is included in a tobacco product trade-mark, and "advertisement" has a corresponding meaning";

(b) insertion after the definition of "advertisement" of the following definitions:

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

'composition' refers to the content, arrangement or combination of substances included in the processing and manufacture of tobacco products:";

(c) insertion after the definition of "Director-General" of the following definition:

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

(d) insertion after the definition of "employed" or "employment" of the following definitions:

" 'importer' means any corporation or person who brings, or attempts

to bring, tobacco products into the Republic of South Africa for sale;

'ingredient' means any product components, materials used to manufacture these components, residual substances from agricultural practices, storage and processing, and substances that can migrate from packing into the product;

(e) insertion after the definiti

logo or company name in relation to a tobacco product, is used in the name of or portrayal of the activity or event[; **but] or is likely to promote tobacco use but;**

(b), exclude ~~any~~ 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;"

(g) substitution for the definition of "package" of the following definition:

" 'package', ~~means a receptacle, container, wrapper or other~~ receptacle or wrapper in which tobacco products are **[generally] sold, supplied or distributed at wholesale or [by] retail;**"

(h) insertion after the definition of "private dwelling" of the following definitions:

" '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 or manufacturer for the purpose 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;"

- (i) substitution for the definition of "public place" of the following definition:

" **'public place'** means any indoor, **[or]** enclosed or semi-enclosed area which is open to the public or any **[part]** member of the public, and includes a workplace or club, every part of a workplace or club and a public conveyance as well as the area within a reasonable distance of any window, ventilation inlets, doorways or entrances to the public place;"

- (j) substitution for the definition of "tobacco product" of the following definitions:

" **'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;"

- (k) substitution for the definition of "workplace" of the following definition:

" **'workplace'**—

- (a) means any indoor, **[or]** enclosed or semi-enclosed area in which employees perform the duties of their employment; and