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## **THE PRESIDENCY**

No. 247 28 February 2008

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

**No. 23 of 2007: Tobacco Products Control Amendment Act, 2007.**



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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.

*(English text signed by the President.)*  
*(Assented to 23 February 2008.)*

## ACT

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.

**B**E 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—

- (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;"; 25

## Act No. 23, 2007 TOBACCO PRODUCTS CONTROL AMENDMENT ACT, 2007

- (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 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;"; and
- (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