



**BERMUDA  
1987 : 2**

**TOBACCO PRODUCTS (PUBLIC HEALTH ) ACT 1987**

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[2 March 1987]

*[preamble and words of enactment omitted]*

### **PART I**

#### **Short title**

1 This Act may be cited as the Tobacco Products (Public Health) Act 1987.

#### **Interpretation**

2 In this Act, unless the context otherwise requires—

"advertisement" means any announcement to the public made or to be made in any manner;

"brand", except in section 8(3), includes a brand product, this is to say a variety of a brand marketed as having qualities differing from another variety of that brand;

"cigarette" means tobacco rolled up in paper or in any other material except tobacco, in such form as to be capable of immediate use for smoking and includes any other product so rolled up and for such use;

"cigarette advertisement" has the meaning assigned to it by section 8;

"employee" means, for the purposes of this Act, a person who is employed for a remuneration under a contract of employment, or who performs services for another person for remuneration under certain terms and conditions;

"employer" includes, for the purposes of this Act, a proprietor, owner, operator or manager of a business, occupation, trade, profession, work or activity who has control or direction of, or is directly or indirectly responsible for the employment of a person in it;

"enclosed public place" means, for the purposes of this Act, the inside of a place, building, structure or vehicle which is covered by a roof and to which the public is normally invited;

“enclosed workplace” means, for the purposes of this Act, the inside of a place, building, structure or vehicle, which is covered by a roof, that employees work in and frequent;

“Minister” means the Minister responsible for Health;

“minor” means a person who has not attained the age of 18 years;

"newspaper" has the same meaning as in the Printed Publications Act 1971 [*title 10 item 3*];

“prescribed” means prescribed by regulations made under this Act;

"publish" in relation to an advertisement means making known an advertisement in any manner;

“tobacco” means any plant of *nicotima tobaccum* or *nicotima bastica*, or any other plant related to *nicotima tobaccum* or *nicotima bastica*, or any leaf or fruit of that plant;

"tobacco or tobacco product advertisement" has the meaning assigned to it by section 9;

“tobacco products” means, for the purposes of this Act, products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing;

“vending machine” means, for the purposes of this Act, a machine which, on insertion of any coin, metal or other material in it, dispenses tobacco or tobacco products automatically or with the help of the buyer;

“wholesale distributor” means, for the purposes of this Act, a wholesale distributor of tobacco or tobacco products.

*[Section 2 eleven definitions inserted by 2005:33 s.3 effective 1 April 2006]*

## **PART II**

### **SALE OF CIGARETTES, TOBACCO AND TOBACCO PRODUCTS**

#### **Health warnings and tar designation when cigarettes are sold**

3 No person shall sell, offer for sale or possess for the purposes of sale any cigarettes unless the packets thereof bear—

- (a) a health warning in the prescribed form and manner;
- (b) a statement as to the content or the amount of tar, as the case may be, in the cigarettes, required to be placed

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on the packets by the country of origin for consumption therein of the cigarettes.

### **Health warnings and tar designation when tobacco or tobacco products sold**

4 No person shall sell, offer for sale or possess for the purpose of sale any tobacco or tobacco products (other than those mentioned in section 3), intended for smoking unless the packet or container thereof bears—

- (a) a health warning in the prescribed form and manner;
- (b) a statement as to the content or the amount of tar, as the case may be, therein required to be placed on the packets or containers by the country of origin for consumption therein of the tobacco or tobacco products, as the case may be.

### **Wholesale distributors to register and submit report**

4A (1) Every wholesale distributor shall apply in a prescribed form to register with the Department of Health.

(2) A wholesale distributor registered under sub-section (1) shall submit to the Minister an annual report in such form as the Minister may direct under this Act.

*[Section 4A inserted by 2005:33 s.5 effective 1 April 2006]*

### **Sale prohibited in designated places**

4B (1) No person shall sell any cigarettes, tobacco or tobacco products in a designated place.

(2) The Minister may, by Notice published in the Gazette, determine which place is to be considered as a designated place.

(3) A designated place shall include—

- (a) a hospital defined in the Mental Health Act 1968 or the Bermuda Hospital Board Act 1970; and
- (b) a residential care home registered under the Residential Care Homes and Nursing Homes Act 1999.

*[Section 4B inserted by 2005:33 s.5 effective 1 April 2006]*

### **Sale from vending machines prohibited**

4C (1) No person shall permit a vending machine to be used in a place he owns or occupies.

(2) Subsection (1) does not apply with respect to a vending machine that does not contain any cigarettes, tobacco or tobacco products.

*[Section 4C inserted by 2005:33 s.5 effective 1 April 2006]*

**Sale or supply to minors prohibited**

4D (1) No person shall sell or supply any cigarettes, tobacco or tobacco products to a minor.

(2) A person selling or supplying any cigarettes, tobacco or tobacco products to a person who appears to be under 25 years of age shall, before selling or supplying them, ensure, by requiring photo identification, that the latter person is not a minor.

*[Section 4D inserted by 2005:33 s.5 effective 6 January 2006]*

**Prohibition on display, handling and promotion**

4E No person shall—

- (a) display or permit the display of any cigarettes, tobacco or tobacco products in a retail shop by means of a countertop display;
- (b) display or permit the display of any cigarettes, tobacco or tobacco products in a retail shop in any manner that allows the purchaser to handle the cigarettes, tobacco or tobacco products before purchasing them; or
- (c) employ or authorize anyone to promote tobacco or tobacco products at any place where the public is invited and is expected to pay in order to be entertained or to watch a sporting event.

*[Section 4E inserted by 2005:33 s.5 effective 6 January 2006]*

**Offences and penalties under Part II**

5 (1) Any person who contravenes section 3 or 4 commits an offence:

Punishment on summary conviction: a fine of \$5,000.

(2) Any manufacturer of cigarettes or his agent or any wholesale distributor of cigarettes who sells, offers for sale or possesses for the purpose of sale any cigarettes to which section 3 applies which have on their packet a statement as to the content or the amount of tar in the cigarettes which is incorrect, commits an offence:

Punishment on summary conviction: a fine of \$5,000.

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(3) Any manufacturer of tobacco or tobacco products or his agent or any wholesale distributor thereof who sells, offers for sale or possesses for the purpose of sale any tobacco or tobacco products to which section 4 applies which have on their packet or container a statement as to the content or the amount of tar therein which is incorrect commits an offence:

Punishment on summary conviction: a fine of \$5,000.

(4) Any person who contravenes any provision under sections 4A to 4E commits an offence under this Act.

(5) Any wholesale distributor who fails to register under section 4A shall be liable on summary conviction to a fine of \$1000.

(6) Any person who contravenes section 4B shall be liable on summary conviction to a fine of \$1000, and in the case of a second or subsequent conviction, to a fine not exceeding \$5000.

(7) Any person who contravenes section 4C shall be liable on summary conviction to a fine of \$1000, and in the case of a second or subsequent conviction to a fine not exceeding \$5000.

(8) Any person who contravenes section 4D shall be liable on summary conviction to a fine of \$1000, and in the case of a second or subsequent conviction, to a fine not exceeding \$5000.

(9) Any person who contravenes section 4E shall be liable on summary conviction to a fine of \$1000, and in the case of a second or subsequent conviction, to a fine not exceeding \$5000.

*[Section 5 subsections (4)-(7) inserted by 2005:33 s.6 effective 1 April 2006, subsections (8)-(9) inserted by 2005:33 s.6 effective 6 January 2006]*

### **PART III**

#### **RESTRICTIONS ON ADVERTISING AND PROHIBITION ON SMOKING**

##### **Cigarette and tobacco product advertisement in printed publications**

6 (1) No person shall print or publish a cigarette advertisement or a tobacco or tobacco product advertisement in a printed publication to which this section applies unless the advertisement bears, in the prescribed form and manner—

- (a) a health warning in the prescribed form and manner;
- (b) a statement as to the content or the amount of tar in the cigarettes or in the tobacco or the tobacco product advertised, as the case may be.

(2) This section applies to—

- (a) any newspaper printed and also published in Bermuda;

- (b) any periodical, magazine or other publication printed and also published in Bermuda.

**Health warnings when cigarette and other advertisements displayed**

7 (1) No person shall—

- (a) display;
- (b) publish or distribute for the purpose of display,

any cigarette advertisement or any tobacco or tobacco product advertisement in writing or other permanent or semi-permanent form unless the advertisement has a health warning in the prescribed form and manner and contains a statement as to the content or the amount of tar in the cigarettes or in the tobacco or tobacco product advertised, as the case may be.

(2) Nothing in this section shall apply in relation to an advertisement referred to in subsection (1) broadcast by television or radio.

**Meaning of cigarette advertisement**

8 (1) For the purposes of this Part an advertisement is a cigarette advertisement if it—

- (a) contains any express or implied inducement, suggestion or request to purchase or smoke cigarettes; or
- (b) relates to smoking in terms which are calculated, expressly or impliedly, to promote or encourage the use of cigarettes.

(2) An advertisement which mentions the name or trade name of any person associated with the marketing of cigarettes or a brand name of cigarettes or any pictorial device commonly associated therewith or which illustrates or mentions smoking or cigarettes or their packages or qualities shall be deemed to be a cigarette advertisement unless the contrary is proved.

(3) Notwithstanding subsection (2), no advertisement shall be deemed to be a cigarette advertisement only because it uses the name or trade name or a brand name of, or otherwise identifies, a person associated with the manufacture or marketing of cigarettes as the sponsor of an event or as congratulating another person or thing on an achievement of, or event relating to, such person or thing.

**Meaning of tobacco or tobacco product advertisement**

9 (1) For the purposes of this Part an advertisement is a tobacco or tobacco product advertisement if it—

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- (a) contains any express or implied inducement, suggestion or request to purchase or smoke tobacco or a tobacco product; or
- (b) relates to smoking in terms which are calculated, expressly or impliedly, to promote or encourage the use of tobacco or a tobacco product.

(2) An advertisement which mentions the name or trade name of any person associated with the marketing of tobacco or a tobacco product or a brand name thereof or any pictorial device commonly associated therewith or which illustrates or mentions smoking or tobacco or a tobacco product or their packages or qualities shall be deemed to be a tobacco or tobacco product advertisement unless the contrary is proved.

(3) Notwithstanding subsection (2), no advertisement shall be deemed to be a tobacco or a tobacco product advertisement only because it uses the name or trade name or a brand name of, or otherwise identifies, a person associated with the manufacture or marketing of tobacco or a tobacco product as the sponsor of an event or as congratulating another person or thing on an achievement of, or event relating to, such person or thing.

### **Prohibition on smoking in certain places**

9A (1) No person shall smoke any cigarettes, tobacco or tobacco products in an enclosed public place or an enclosed workplace.

(2) Without prejudice to the generality of subsection (1) and subject to subsection (3), smoking shall be prohibited in the following places—

- (a) private and public schools;
- (b) “pre-schools”, and “day care centres” and “residential homes” defined in the Children Act 1998;
- (c) “hospitals” defined in the Mental Health Act 1968 and the Bermuda Hospital Board Act 1970;
- (d) “residential care homes” registered under the Residential Care Homes and Nursing Homes Act 1999;
- (e) office buildings;
- (f) vehicles owned by an employer and used by the employees in the course of employment;
- (h) “restaurants” defined in the Restaurant Act 1961;
- (i) “licensed premises” defined in the Liquor Licence Act 1974;



(j) “hotels” defined in the Hotels (Licensing and Control) Act 1969.

(3) The Minister may, by regulations, make exceptions for particular places subject to subsection (1) or (2).

(4) The negative resolution procedure shall apply to regulations made under subsection (3).

*[Section 9A inserted by 2005:33 s.8 effective 1 April 2006]*

**Obligations on employers**

9B (1) Every employer shall, with respect to an enclosed public place or enclosed workplace, as the case may be—

- (a) ensure, with all reasonable efforts, that the environment of the place is smoke-free;
- (b) inform, with all reasonable efforts, all the employees that the place is smoke-free;
- (c) post ‘NO-SMOKING’ signage in a conspicuous part of the place; and
- (d) take such action as he considers appropriate where any employee does not comply with the prohibition on smoking.

(2) No employer shall take any action against an employee for seeking enforcement of this Act or acting in accordance with the requirements under this Act.

*[Section 9B inserted by 2005:33 s.8 effective 1 April 2006]*

**Inspectors to ensure compliance**

9C (1) The Minister may, with the approval of the Public Service Commission, authorize any public officer in the Department of Health to act as an inspector in order to ensure compliance with this Act.

(2) An inspector authorized under subsection (1) may—

- (a) enter and inspect any designated place, retail shop, enclosed workplace or enclosed public place, including a place referred to in section 9A(2);
- (b) request any person for information relevant to the inspection.

(3) An inspector shall, after an inspection, make a report in writing to the Department of Health.

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(4) An inspector shall not be liable for any act done or omitted in good faith and in pursuance of this section.

*[Section 9C inserted by 2005:33 s.8 effective 1 April 2006]*

### **Offences and penalties under Part III**

10 (1) Any person who contravenes section 6(1) or 7(1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further penalty not exceeding \$500 for each day during which the offence continues.

(2) In any proceedings for a contravention of section 6(1) it shall be a defence for the person charged to prove that the advertisement to which the proceedings relate was printed or published in such circumstances that he did not know and had no reason to believe he was taking part in the printing or publication thereof.

(3) Any person who contravenes any provision under section 9A or 9B commits an offence under this Act.

(4) Any person who contravenes section 9A shall be liable on summary conviction to a fine of \$250, and in the case of a second or subsequent conviction, to a fine not exceeding \$1000.

(5) Any employer who contravenes section 9B shall be liable on summary conviction to a fine of \$1000.

(6) Any person who obstructs an inspector in the performance of his duties under section 9C(2) commits an offence and shall be liable on summary conviction to a fine of \$1000.

*[Section 10 title and subsections (3)-(6) inserted by 2005:33 s.9 effective 1 April 2006]*

## **PART IV**

### **MISCELLANEOUS**

#### **Regulations**

11 (1) The Minister may make regulations for all or any of the following matters—

- (a) prescribing anything required or permitted to be prescribed under this Act;
- (b) requiring notification of anything done by any person which may be relevant to the content or the amount of tar contained in cigarettes or in tobacco or in a tobacco product;
- (c) for the better carrying into effect of this Act.

(2) Regulations made under subsection (1) shall be subject to the negative resolution procedure.

**Commencement**

12 [omitted]

*[this Act was brought into operation on 1 May 1988]*

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*[Amended by:*

2005 : 33]