

**TOBACCO PRODUCTS (PUBLIC HEALTH) AMENDMENT ACT
2005**



BERMUDA

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**TOBACCO PRODUCTS (PUBLIC HEALTH) AMENDMENT ACT
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Date of Assent: 29 December 2005

Operative Dates: sections 2, 4D, 4E, 5(8) and (9) 6 January 2006

All other sections 1 April 2006

ARRANGEMENT OF SECTIONS

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WHEREAS it is expedient to amend the Tobacco Products (Public Health) Act 1987 and to make provisions for ensuring compliance with the Framework Convention on Tobacco Control (FCTC) in Bermuda:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Short title

1 This Act may be cited as the Tobacco Products (Public Health) Amendment Act 2005.

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Interpretation

2 In this Act the “principal Act” means the Tobacco Products (Public Health) Act 1987.

Amends section 2

3 Section 2 of the the principal Act is amended by inserting in the appropriate alphabetical order the following definitions—

“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;

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

“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 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.

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Amends heading of Part II

4 The principal Act is amended by deleting the heading to Part II and substituting the following—

“Sale of Cigarettes, Tobacco and Tobacco products”.

Inserts sections 4A to 4E

5 The principal Act is amended by inserting the following sections after section 4—

“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.

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.

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.

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

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requiring photo identification, that the latter person is not a minor.

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.”.

Amends section 5

6 Section 5 of the principal Act is amended—

- (a) by deleting the marginal heading and substituting the following—

“Offences and Penalties under Part II”; and

- (b) by inserting the following subsections next after subsection (3)—

“(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

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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.”.

Amends heading to Part III

7 The principal Act is amended by deleting the heading to Part III and substituting the following—

“Restrictions on Advertisement and Prohibition on Smoking”.

Inserts sections 9A to 9C

8 The principal Act is amended by inserting the following sections after section 9—

“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.

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(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).

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.

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.

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

Amends section 10

9 Section 10 of the principal Act is amended—

(a) by inserting the following marginal heading—

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“Offences and Penalties under Part III”; and

(b) by inserting the following subsections next after subsection (2)—

“(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.”.

Transitional provision

10 (1) No person shall be prosecuted under section 4A, 4B, 4C or 9A for an offence committed within six months of the coming into operation of that section.

(2) No employer shall be prosecuted under section 9B for an offence committed within six months of the coming into operation of that section.

Commencement

11 This Act comes into operation on such day as the Minister may appoint by Notice published in the Gazette, and the Minister may appoint different days for different provisions of this Act or for different provisions enacted by a provision of this Act.