

## Legislative Council

As passed all stages and awaiting assent.

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South Australia

# Tobacco and E-Cigarette Products (Tobacco Product Prohibitions) Amendment Bill 2023

A BILL FOR

An Act to amend the *Tobacco and E-Cigarette Products Act 1997*.

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Tobacco and E-Cigarette Products (Tobacco Product Prohibitions) Amendment Act 2023*.

### 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

## Part 2—Amendment of *Tobacco and E-Cigarette Products Act 1997*

### 3—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *health warning*—delete the definition

- (2) Section 4(1)—after the definition of *premises* insert:

***prescribed packaging requirements*** means—

- (a) the requirements for the retail packaging and appearance of tobacco products in the *Tobacco Plain Packaging Act 2011* of the Commonwealth; and
- (b) the provisions of the *Competition and Consumer (Tobacco) Information Standard* made under the *Competition and Consumer Act 2010* of the Commonwealth prescribed by the regulations for the purposes of this definition; and
- (c) any other requirements prescribed by the regulations;

- (3) Section 4(2)—delete subsection (2)

#### **4—Amendment of section 30—Restrictions on retail sale of tobacco products and e-cigarette products**

- (1) Section 30(1)(b) to (d) (inclusive)—delete paragraphs (b) to (d) (inclusive) and substitute:
  - (b) a person must not sell a tobacco product unless it is enclosed in a package that complies with the prescribed packaging requirements;
- (2) Section 30(1), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$50 000.
- (3) Section 30(1), expiation fee—delete the expiation fee and substitute:  
Expiation fee: \$1 250.
- (4) Section 30—after subsection (1) insert:
  - (1a) In subsection (1)(b), a reference to a tobacco product enclosed in a package includes a tobacco product that is enclosed in 2 or more packages.

#### **5—Substitution of sections 31 and 32**

Section 31 and 32—delete the sections and substitute:

##### **31—Requirements for packaging tobacco products**

A person must not package tobacco products for retail sale in a manner that the person knows or ought reasonably to know does not comply with the prescribed packaging requirements.

Maximum penalty: \$50 000.

##### **32—Prohibition on sale or supply of certain tobacco products**

A person must not sell or supply tobacco products that the person knows or ought reasonably to know—

- (a) are prohibited goods as defined in the *Customs Act 1901* of the Commonwealth; or

- (b) are excisable goods as defined in the *Excise Act 1901* of the Commonwealth on which excise duty has not been paid.

Maximum penalty: \$50 000.

### **33—Possession of certain tobacco products**

- (1) A person must not, without lawful excuse, have possession of prescribed tobacco products for the purpose of sale.

Maximum penalty: \$50 000.

- (2) In this section—

*prescribed tobacco product* means tobacco products that—

- (a) are prohibited goods within the meaning of the *Customs Act 1901* of the Commonwealth; or
  - (b) do not comply with the prescribed packaging requirements.
- (3) In proceedings for an offence against subsection (1), if it is proved that the defendant had possession of a prescribed quantity of prescribed tobacco products, it is presumed, in the absence of proof to the contrary, that the defendant had possession of the prescribed tobacco products for the purposes of sale.