



TOBACCO PRODUCTS CONTROL (MISCELLANEOUS) AMENDMENT ACT 1993

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ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1993

No. 71 of 1993

An Act to amend the Tobacco Products Control Act 1986.

[Assented to 16 September 1993]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Tobacco Products Control (Miscellaneous) Amendment Act 1993*.

(2) The *Tobacco Products Control Act 1986* is referred to in this Act as “the principal Act”.

Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.

(2) Section 7 will come into operation on 1 January 1994.

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

- (a) by striking out “the age of 16” from the definition of “child” and inserting “the age of 18”;
- (b) by inserting after “regulation” in the definition of “health warning” “(or by direction of the Minister under the regulations)”;
- (c) by inserting after the definition of “health warning” the following definition:

“label” includes information that is enclosed in or attached to or is provided with a package containing tobacco products but which does not comprise part of the package and “labelling” and “labelled” have a corresponding meaning;;

(d) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) A health warning may comprise two or more parts and the term "health warning" includes all the parts of such a warning unless the contrary intention appears.

Amendment of s. 4—Sale of tobacco products by retail

4. Section 4 of the principal Act is amended by striking out subsections (1) and (2) and substituting the following subsections:

(1) A person must not sell a tobacco product by retail unless it is enclosed in a package that complies with the regulations and is labelled in accordance with the regulations.

(2) A person must not sell a tobacco product by retail that is enclosed in two or more packages unless each package complies with the regulations and is labelled in accordance with the regulations.

(2a) A person must not sell a tobacco product by retail if the package containing the tobacco product is wrapped in a material that is not wholly transparent.

Amendment of s. 5—Importing and packing of tobacco products

5. Section 5 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

(a) the packages in which the tobacco products are packed comply with the regulations and are labelled in accordance with the regulations;;

(b) by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

(a) that the packages in which the tobacco products are packed comply with the regulations and are labelled in accordance with the regulations;.

Amendment of s. 6—Tobacco products in relation to which no health warning has been prescribed

6. Section 6 of the principal Act is amended by inserting after "is prescribed" (first occurring) "by regulation (or by direction of the Minister under the regulations)".

Substitution of s. 8

7. Section 8 of the principal Act is repealed and the following section is substituted:

Information as to tar, nicotine, etc., content of cigarettes

8. (1) A person who sells cigarettes by retail must, on demand by a customer who is considering purchasing cigarettes, provide the customer with information as to the quantity of tar and carbon monoxide that will be produced, and the quantity of nicotine that will be released, in the normal course of smoking each cigarette.

(2) The information must be provided in writing in a form approved by the South Australian Health Commission.

Penalty: \$500.

Insertion of s. 10a

8. The following section is inserted after section 10 of the principal Act:

Sale of tobacco products by vending machine

10a. (1) A person must not sell cigarettes or any other tobacco product by means of a vending machine unless the machine is situated on licensed premises within the meaning of the *Liquor Licensing Act 1985*.

(2) The Frustrated Contracts Act 1988 applies to a contract between the owner or occupier of premises and the owner of a vending machine that is frustrated by the operation of subsection (1) whether the contract was made before or after the commencement of that Act.

Amendment of s. 11—Sale of tobacco products to children

9. Section 11 of the principal Act is amended—

(a) by striking out from subsection (1) “Penalty: \$1 000

Expiation fee: Division 8 fee”;

(b) by striking out from subsection (2) “Penalty: \$1 000

Expiation fee: Division 8 fee”;

(c) by striking out from subsection (3)(a) “the age of 16” and substituting “the age of 18”;

(d) by inserting after subsection (4) the following subsections:

(5) Where a court convicts a person who is not a member of a group of tobacco merchants within the meaning of the *Tobacco Products (Licensing) Act 1986* of an offence against subsection (1) or (2) and the person has previously been convicted of an offence against either of those subsections within the immediately preceding three years—

(a) the court may disqualify the person from applying for or holding a tobacco merchant’s licence under the *Tobacco Products (Licensing) Act 1986* during such period (not exceeding six months) as the court orders;

or

- (b) if the person supplies tobacco products (including by vending machine) at two or more premises the court may, instead of disqualifying the person, order that for the purposes of the *Tobacco Products (Licensing) Act 1986* the person will be taken to be an unlicensed tobacco merchant in respect of the supply of tobacco products from premises specified by the court during such period (not exceeding six months) as the court orders.

(6) Where a court convicts a person who is a member of a group of tobacco merchants within the meaning of the *Tobacco Products (Licensing) Act 1986* of an offence against subsection (1) or (2) and the person has previously been convicted of an offence against either of those subsections within the immediately preceding three years—

- (a) the court may disqualify the person from applying for or holding a tobacco merchant's licence under the *Tobacco Products (Licensing) Act 1986* during such period (not exceeding six months) as the court orders and, in that event, the licence held on behalf of the group is cancelled and a person cannot hold a licence on behalf of a group that includes the convicted person during the period of his or her disqualification;

or

- (b) the court may order that for the purposes of the *Tobacco Products (Licensing) Act 1986* the person will be taken to be an unlicensed tobacco merchant in respect of the supply of tobacco products from premises specified by the court during such period (not exceeding six months) as the court orders.

(7) The *Tobacco Products (Licensing) Act 1986* will apply to a person who is the subject of an order of a court under subsection (5)(b) or (6)(b) in accordance with the court's order.

Amendment of s. 11a—Certain advertising prohibited

10. Section 11a of the principal Act is amended by striking out paragraphs (c) and (d) from subsection (3) and substituting the following paragraphs:

- (c) a tobacco advertisement of a prescribed kind that is displayed inside a shop or warehouse within a prescribed distance from the place where tobacco products are offered for sale;
- (d) a tobacco advertisement of a prescribed kind that is displayed at a prescribed distance from a shop or warehouse where tobacco products are offered for sale;

Amendment of s. 16—Regulations

11. Section 16 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

- (2) Without limiting the generality of subsection (1), the regulations may—

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- (a) prescribe the design, construction and materials of packages containing tobacco products;
 - (b) prescribe warnings and information (or empower the Minister to give directions as to warnings and information) that must be displayed on packages containing tobacco products;
 - (c) prescribe other labelling requirements (or empower the Minister to give directions as to other labelling requirements) for packages containing tobacco products;
 - (d) prescribe warnings that must be displayed in, or in conjunction with, advertisements of tobacco products and the manner and form in which those warnings must be displayed;
 - (e) prescribe penalties for contravention of, or failure to comply with, a regulation.

Insertion of schedule 3

12. The following schedule is inserted after schedule 2 of the principal Act:

SCHEDULE 3
Transitional Provisions

1. It is a defence to a charge of an offence against section 4 to prove that the sale of tobacco products alleged to constitute the offence occurred—
 - (a) within one month before this Act or the regulations were amended and that the sale complied with the law as it applied after the amendment came into force; or
 - (b) within three months after this Act or the regulations were amended and that the sale complied with the law as it applied immediately before the amendment came into force.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor