

CONTROL OF SMOKING (AMENDMENT) ACT, 2004

No. 28



of 2004

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Control of Smoking Act

Date of assent: 30th August, 2004

Date of commencement: 3rd September, 2004

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Control of Smoking (Amendment) Act, 2004.

Short title

2. The Control of Smoking Act (hereinafter referred to as “the Act”) is amended, in section 2 thereof by —

Amendment
of section 2
of Cap. 65:04

(a) deleting the definitions of “internal flight” and “licensed premises”;

(b) inserting, immediately after the word “Act” which appears in the definition of “public service vehicle”, the following new words —

“, and shall, for the purposes of this Act, include a private hire vehicle as defined in that Act”;

(c) inserting, in their correct alphabetical order, the following new definitions —

““public place” means any place to which members of the public or segments thereof have access by express or implied invitation;

“second-hand smoke” means —

(i) the smoke exhaled from a person smoking a tobacco product, or

(ii) any side-stream smoke;

“separate ventilation” means the extraction of air from a smoking area without re-circulating it into the non-smoking area; and

“side-stream smoke” means the smoke emitted from a tobacco product while the tobacco product smoulders between puffs;”;

(d) substituting, for the definition of “work place”, the following new definition —

““work place” means any place, including any public service vehicle or other means of transport in which employees, contractors, or other persons perform duties of employment or work, and includes private offices, common areas, and any other area, which they generally use during the course of their employment or work.”.

3. The Act is amended by substituting, for Part II thereof, the following new Part —

“PART II

Smoking in public places, workplaces, etc.

Duty of
persons to
protect other
persons from
tobacco
smoke

3. (1) Every person who smokes shall, while smoking, take all reasonable measures to ensure that other persons who do not smoke or do not wish to smoke are protected from exposure to tobacco smoke.

(2) Every family shall, at their home, create an environment that will enable children to be protected from exposure to second-hand smoke and the enticement to smoke.

(3) Every pregnant or lactating woman shall protect the unborn or lactating child from exposure to tobacco smoke by avoiding smoking and exposure to second-hand smoke.

Smoking in
private or
public
work-places
and in public
places

4. (1) No person shall smoke in any enclosed, indoor designated non-smoking area of any private or public workplace, or in a public place.

(2) For the purposes of this Act, a private or public workplace and public place include —

(a) an office and office building including a public area, corridor, lounge, eating area, reception area, elevator, escalator, foyer, stairwell, restroom, amenity area, laundry room and an individual office;

(b) a factory;

(c) a health institution;

(d) an educational institution of any level;

(e) any premises in which children are cared for, whether for a fee or not;

(f) a public service vehicle;

(g) a waiting room in a public transportation terminal;

(h) a retail establishment including a shopping mall;

- (i) a cinema;
- (j) a recreation hall;
- (k) a sports stadium;
- (l) a bar;
- (m) a restaurant;
- (n) a pool hall and a bingo hall;
- (o) a prison;
- (p) a police and a military barracks;
- (q) a publicly owned facility rented out for events;
- (s) any facility that employs paid personnel; and
- (r) any facility accessible to the public.

(3) Notwithstanding the provisions of subsections (1) and (2), an owner or occupier of a place of lodging, a private or public work place or a private place may designate guest rooms or areas where smoking is allowed and shall ensure that —

- (a) those rooms or areas are physically detached from the rooms where smoking is not allowed, or, where they are not physically detached, that they are separately ventilated;
- (b) the total percentage of the rooms or areas allocated to smoking is not more than 20 per cent of the total number of rooms or areas in that place of lodging or private or public work place or public place; and
- (c) separate entrances are created so as to prevent non-smokers from walking through a smoking area.

5. (1) The owner or occupier of all private and public places or the operator of any public service vehicle shall post permanent signs prominently on the premises, at a place where people can easily see and read them, stating that smoking is not permitted on the place or public service vehicle.

Signs
required

(2) The owner or occupier of any premises where smoking is permitted shall post permanent signs prominently on the premises, at a place where people can easily see and read them, stating that smoking is permitted on the premises.

(3) The owner or operator of a public service vehicle shall ensure that passengers are informed that smoking is not allowed in the public service vehicle.

- (4) The signs referred to in subsection (1) shall —
 - (a) be at least 19cm by 19cm and the information displayed on them shall be printed in the English and Setswana languages and shall read “No Smoking”, or “*Ga Go Gogwe Motsokwe*”; and
 - (b) carry the warning “Any person who fails to comply with this notice shall be prosecuted and may be liable to a fine”.
- (5) The signs referred to in subsection (2) shall —
 - (a) be at least 19 cm by 19 cm and the information displayed on them shall be printed in English and Setswana languages and shall read “Smoking allowed” and “*go goga motsoko go leteleletswa*”; and
 - (b) carry the following warning —
‘WARNING: smoking is dangerous to your health’.

Obligations of owners or occupiers of public places, work places and public service vehicles

6. (1) The owner or occupier of any public place or work place, and the owner or operator of any public service vehicle, or the agent of such owner, occupier or operator, shall take all reasonable steps to ensure that no person smokes in contravention of the provisions of this Part.

(2) For the purposes of subsection (1), “taking reasonable steps” includes —

- (a) asking an offending person to stop smoking;
- (b) demanding that an offending person who continues to smoke leave the public place or workplace;
- (c) demanding that an offending person who continues to smoke leave the public service vehicle at the next scheduled stop, as applicable and practicable; and
- (d) seeking the assistance of law enforcement personnel in cases where the offending person refuses to stop smoking or to leave the premises or the public service vehicle,

whenever these actions can be taken safely.

(3) An employer, owner or occupier of a public place or work place, or an owner or operator of a public service vehicle shall not retaliate against any employee or person who reports any contravention under this Part.

Smoking in certain outdoor spaces

7. The Minister may, by regulations, prohibit or apply restrictions to smoking and signs requirements in public outdoor spaces where persons are likely to congregate within close proximity to one another, or where smoking might cause a fire or other hazard.

Sale, etc. of tobacco to person under the age of 18 years

8. (1) No person shall sell, give or furnish a tobacco product to any person under the age of 18 years.

(2) A person who intends to sell, give or furnish a tobacco product to any person shall, prior to doing so, take all reasonable steps to verify the age of that person.

(3) Without prejudice to the generality of subsection (2), a person who intends to sell, give or furnish a tobacco product to any person shall require that person to produce a national identity card, a driver's licence or a passport before any tobacco product is sold, given or furnished to such person.

(4) No tobacco manufacturer, seller or promoter shall hire or use any person under the age of 18 years to sell, give or furnish any tobacco product to any other person or to handle any tobacco product.

(5) Any person who sells, by retail, any tobacco product, shall display clearly, for the public, a notice to the effect that the sale of any tobacco product to a person under the age of 18 years is prohibited.

(6) A person who contravenes the provisions of subsection (1) or (4) shall be guilty of an offence and liable to a fine not exceeding P5000 or to imprisonment for a term not exceeding 3 months, or to both.”.

4. The Act is amended by substituting, for the heading to Part V thereof, the following new heading —

Amendment
of the Act

“PART V
General Provisions”.

5. The Act is amended, in section 16 thereof —

(a) by substituting —

(i) for the words “this Act” appearing in subsection (1) thereof, the words “Part II hereof”, and

(ii) for the words “P500”, appearing therein, the words “P1000”; and

(b) by substituting, for subsection (3) thereof, the following new subsection —

“(3) Any person who contravenes or fails to comply with any provision of this Act for which no specific penalty has been prescribed shall be guilty of an offence and liable to a fine not exceeding P1000.”.

Amendment
of section 16
of the Act

6. The Act is amended by inserting, immediately after section 16 thereof, the following new sections —

“Structural
changes

16A. (1) Where structural changes are necessary in order to comply with any of the provisions of Part II, written applications shall be made to the Minister responsible for health requesting exemption for periods of up to eighteen months.

Amendment
of the Act

(2) An application made under subsection (1) shall set out clear details of the nature and extent of the proposed structural changes as well as the exact time envisaged to make the structural changes.

Regulations

16B. The Minister may make regulations for the better carrying out of the objects and purposes of this Act.”.

Amendment
of the Act

7. The Act is amended by deleting section 17 thereof.

PASSED by the National Assembly this 12th day of August, 2004.

A. MATLHAKU,
Clerk of the National Assembly.