

CONTROL OF SMOKING ACT, 1992

No. 33



of 1992

ARRANGEMENT OF SECTIONS

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An Act to control the smoking of tobacco and tobacco products

Date of Assent: 24.12.92.

Date of Commencement: By notice in the Gazette.

ENACTED by the Parliament of Botswana.

Part I — Preliminary

Short title
and
commen-
cement

1. This Act may be cited as the Control of Smoking Act, 1992, and shall come into operation on such date as the Minister may appoint:

Provided that the Minister may appoint different dates for the coming into operation of different provisions of the Act.

Interpretation

2. In this Act, unless the context otherwise requires —

“internal flight” means a flight between two or more places in Botswana;

Cap. 43:02

“licensed premises” means any premises licensed under the provisions of section 29 of the Trade and Liquor Act;

“public service vehicle” has the same meaning as in the Road Traffic Act;

Cap. 69:01

“restaurant” means any premises or part of any premises where the principal business is the selling of meals or refreshments to the general public for consumption on the premises, whether or not liquor may also be sold on such premises or part thereof, and shall include any area on a train where food or refreshments are provided for consumption by passengers;

“tobacco product” means any product manufactured from tobacco, and intended for use by smoking, inhalation or used as an oral or nasal snuff, but shall not include any medicine sold or supplied wholly or principally for use as an aid in giving up smoking;

“tobacco advertisement” means any words written, printed or spoken, or film, video recording or other medium broadcast or telecast, or pictorial representation, design or device used to encourage the use of or notify the availability of, or promote the sale of any tobacco or tobacco product, or to promote smoking behaviour;

“workplace” means any indoor or enclosed area that is occupied by an employer and that employees usually frequent during the course of their employment, and includes any aircraft, train, cafeteria, corridor, lift, lobby, stairwell, toilet and washroom, and includes any enclosed common areas and vehicles provided by the employer and normally used by employees.

Part II — Smoking in Workplaces etc.

Smoking in
workplaces

3. (1) Every employer shall, within 3 months after the coming into operation of this Part of this Act, and after consultation with the employees affected, or likely to be affected, or with the nominated representatives of such employees, prepare in writing, and give effect to, a policy with regard to smoking in every workplace of such employer.

(2) The policy referred to in subsection (1) shall be based on the principle that employees who do not smoke, or who do not wish to smoke in their workplace, shall so far as is reasonably practicable, be protected from tobacco smoke in such workplace.

(3) Every such policy on smoking shall, as a minimum, include the following requirements —

(a) that smoking shall not be permitted in lifts or in any office area where more than one person works in a common air space, or in any part of the workplace to which members of the public normally have access;

(b) that smoking shall not be permitted in at least half of the total area of any cafeteria or lunch room at the work place, or, where there is more than one session of any lunch break or tea break at any such cafeteria or lunchroom, and employees can freely choose which session to attend, during the first such session;

(c) the procedure for any employee or group of employees in any workplace that is not an office to request that smoking shall not be permitted within a specified distance of the usual work area of that employee or group of employees; and

(d) the procedure for making complaints under this Part.

(4) The employer shall ensure that the policy in respect of smoking prepared in accordance with the provisions of subsection (1) is reviewed, in consultation with the employees concerned or their representatives, not less frequently than each year.

(5) Nothing in this section shall be construed as precluding the employer from giving permission to smoke in any enclosed area occupied exclusively by employees, each of whom, in writing, requests that smoking be permitted in such area, or states that he does not object to smoking in such area.

(6) For every workplace occupied by an employee, the employer shall ensure that there are prominently displayed notices indicating areas where smoking is not permitted, and identifying and locating any permitted smoking areas.

(7) The employer shall cause to be displayed or made available in any workplace, a copy of the policy on smoking applicable to that workplace, and shall, on request, supply a copy of such policy to any employee, prospective employee or representative of such employee.

4. The written policy on smoking required under section 3 may, in respect of hospitals or nursing homes, include a provision that any patient or resident who is so incapacitated as to be unable to move or be moved readily, may be permitted to smoke in an area that is not a permitted smoking area, but in such case the employer shall take all such steps as may be practicable to ensure that other persons in the vicinity will not be adversely affected by the smoke.

Smoking in
hospitals etc.

5. (1) The Director of Prisons shall, within three months of the coming into operation of this Part, prepare in writing and give effect to a policy on smoking which shall be applicable in all prisons in Botswana:

Smoking
in prisons

Provided that such policy may provide for different provisions in respect of different prisons.

(2) The policy prepared in accordance with the provisions of subsection (1) shall be drawn up in such a way as to be consistent with the policy on smoking required under section 3, and shall be based on the principle that inmates who do not smoke, or who do not wish to smoke, shall, except where it is impracticable, be protected from tobacco smoke in the prison.

(3) Any prison inmate who requests that he or she be secured in a cell in which smoking will not be permitted while he or she is there shall, except where it is impracticable, be placed in such a cell.

(4) Subject to the provisions of subsection (2), the officer in charge of any prison may designate any enclosed area used in common by inmates of the prison as an area in which smoking may be permitted.

Smoking on
aircraft, trains
and public
service
vehicles

6. (1) Smoking shall not be permitted on any aircraft whilst it is carrying passengers for hire or reward on any internal flight.

(2) Smoking shall not be permitted on any public service vehicle whilst it is carrying passengers for hire or reward:

Provided that the provisions of this subsection shall not apply to any small public service vehicle where the driver and every passenger in the vehicle agrees that smoking shall be permitted.

(3) Smoking shall not be permitted in any area normally used by passengers on a passenger train unless such area has been designated as a permitted smoking area, and is so indicated by prominent notice:

Provided that no enclosed corridor, gangway or accessway used by passengers may be included in any permitted smoking area.

(4) Subject to the provisions of subsection (3), the operator of a passenger train may, after such consultations as may be desirable, designate not more than half of the areas on a train designed for accommodating passengers as permitted smoking areas.

Smoking in
passenger
lounges and
waiting rooms

7. (1) Smoking shall not be permitted in any area within an enclosed travel terminal used as a booking area, a passenger queuing area, a passenger waiting room or a passenger lounge, except in a permitted smoking area.

(2) The owner or occupier of a passenger waiting room or a passenger lounge may designate not more than half of its area, adequately separated and clearly identified, as a permitted smoking area.

Smoking on
licensed
premises

8. (1) Where, in any licensed premises, any room or enclosed area is set aside primarily for the consumption of liquor by patrons, the licensee may permit smoking in that room or area.

(2) Notwithstanding the provisions of subsection (1), where, in any such room or area, seating is set aside for the consumption of meals by patrons, the licensee shall ensure that —

(a) at least half of that seating is designated for persons who do not smoke or who do not wish to smoke, and shall prominently display signs accordingly; and

- (b) such designated seating is, so far as is reasonably practicable, separated from the seating where smoking is permitted; and
- (c) no person smokes in an area designated for persons who do not smoke or who do not wish to smoke.

9. (1) Where, in any restaurant, there is only one room or enclosed area set aside for the consumption of food by patrons, the restaurateur shall ensure that —

Smoking in
restaurants

- (a) at least half of the seating in that room or area is designated for persons who do not smoke or do not wish to smoke, and shall prominently display signs accordingly; and
- (b) such designated seating is, so far as is reasonably practicable, adequately separated from the seating where smoking is permitted; and
- (c) no person smokes, except in seating set aside for persons who wish to smoke.

(2) Where, in any restaurant, there is more than one room or enclosed area set aside for the consumption of food by patrons, the restaurateur shall —

- (a) designate at least one of such rooms or areas for persons who do not smoke or who do not wish to smoke, and shall prominently display signs accordingly; and
- (b) ensure that at least half of the seating in the restaurant is designated for persons who do not smoke or who do not wish to smoke, and ensure that no person smokes in the area so designated.

(3) Where, in any premises or any part of any premises, or on any train, more than one room or enclosed area is used as a restaurant, and one or more of those rooms or areas, or any combination of them, is treated as a separate restaurant by reason that it caters for a different category of patron, or offers a different type of meal or refreshment or a different type of service, the provisions of this section shall apply in respect of each such room or enclosed area, or as the case may be each combination of them, as if it were a separate restaurant.

10. No person shall smoke in any school or other educational establishment, or in any classroom thereof:

Smoking in
schools

Provided that where all the students at any such school or educational establishment are adults, the principal or owner of such school or educational establishment may permit smoking, but if he does so shall ensure that at least half of the area thereof is reserved for persons who do not or who do not wish to smoke.

11. Within any hall, theatre or other enclosed area open to the public, or in which members of the public gather, at least half of the area thereof shall be reserved for persons who do not smoke or who do not wish to smoke

Smoking in
enclosed
public areas

12. (1) No person shall sell any tobacco or tobacco product to a person who has not attained the age of 16 years.

Sales to
persons
under 16

(2) It shall be a defence to a charge under subsection (1) to prove that the person who sold the tobacco or tobacco product believed, on reasonable grounds, that the person to whom it was sold was of or over the age of 16 years.

(3) Any person who sells by retail any tobacco or tobacco product shall display clearly for the public a notice to the effect that the sale of any tobacco or tobacco product to a person who has not attained the age of 16 years is prohibited.

Part III — *Promotion and Advertising*

Advertising
of tobacco
and tobacco
products

13. (1) Subject to the provisions of this section, no person shall publish, or arrange for any other person to publish any tobacco advertisement in Botswana.

(2) Nothing in subsection (1) shall apply to any price list given to retailers of tobacco or tobacco products if the price list includes a health warning conforming to the requirements of subsection (4).

(3) Nothing in subsection (1) shall apply to any advertisement appearing in any book, magazine or newspaper printed outside Botswana, or in any radio or television transmission originating outside Botswana, or in any film or video recording made outside Botswana unless —

(a) the principal purpose thereof is the promotion of the use of tobacco or tobacco products; or

(b) it is intended for sale, distribution or exhibition primarily in Botswana; or

(c) in the case of an advertisement in any radio or television transmission, it is targeted primarily at a Botswana audience.

(4) The health warning referred to in subsection (2) means and includes —

(a) a warning that the use of the product can be injurious to health; and

(b) a list of any constituents of the product that are declared in regulations made under this Act to be harmful constituents for the purposes of this section, and the respective quantities of such constituents in the product.

(5) Any person who offers for sale, by way of an automatic vending machine, any tobacco or tobacco product shall, in accordance with regulations made under this Act, display on the machine such health message as is referred to in subregulation (4).

Part IV — *Health Committees and Complaints*

Establishment
of health
committees

14. (1) The Minister shall establish a committee to advise him on matters relating to smoking and the implementation of the provisions and purposes of this Act.

(2) Local authorities may establish their own committees to advise them and to ensure compliance with, and to promote, the purposes and the provisions of this Act, and in the exercise of their functions under this Act they shall be subject to any directions by the Minister.

Complaints

15. (1) Where any person believes on reasonable grounds that there has been a contravention of the provisions of this Act in respect of any workplace, he may complain to the employer at that workplace, specifying the particulars of the complaint, and within 10 working days of receiving such complaint the employer shall investigate it or cause it to be investigated, and if it appears that a contravention has occurred he shall try to resolve the complaint.

(2) Where the contravention is on the part of the employer, the employer shall resolve the cause of the complaint, or give an assurance that satisfies the complainant that there will be no repetition of the cause of the complaint.

(3) Where the contravention is on the part of an employee, the employer shall seek to obtain from that employee an assurance that satisfies the employer that there will be no repetition of the cause of the complaint.

(4) The representative of the employees at the workplace shall be entitled to be present at any meeting called by the employer for the purpose of resolving the complaint and avoiding future causes of complaint.

Part V — *Offences*

16. (1) Any person who smokes in any room or area in contravention of the provisions of this Act shall be guilty of an offence and liable to a fine of P500.

Offences

(2) Any employer, restaurateur, operator of an aircraft, train or public service vehicle, or owner or occupier of any passenger waiting room or lounge who contravenes any provision of this Act, or who fails to comply with any provision thereof with which it is his duty to comply, shall be guilty of an offence and shall be liable, in the case of an individual to a fine of P1 000, or in the case of a body corporate to a fine of P10 000.

(3) Any person who contravenes or fails to comply with any provision of section 12 shall be guilty of an offence and liable to a fine of P1 000.

17. Nothing in this Part of this Act shall limit or affect the powers of any local authority to make bye-laws providing greater protection from tobacco smoke than is provided by this Part.

Saving of
powers
to make
bye-laws

PASSED by the National Assembly this 15th day of December, 1991.

C.G. MOKOBI,
Clerk of the National Assembly.