

## **The Control of Tobacco Products and Electronic Delivery Systems Bill: Overview**

1. The Control of Tobacco Products and Electronic Delivery Systems Bill ("**the Bill**") was published in the *Government Gazette* on 9 May 2018 for public comment. If passed into law, the Bill will repeal the Tobacco Products Control Act, 83 of 1993 ("**TPCA**") in its entirety and will be the sole piece of legislation to regulate tobacco products and electronic delivery systems. We refer to them both as "products". The Bill still incorporates the key elements of the TPCA, but in most instances has very significantly made them stricter and harsher.
2. The Bill aims to regulate tobacco products and electronic delivery systems in a very similar fashion in most respects, even though the Bill acknowledges that the harmful effect of using electronic delivery systems "*remain unknown*". The only significant distinction is in respect of packaging and labelling. The definition of "smoke" has been broadened to include the smoking of tobacco products (that can include igniting or just heating the product), as well as operating electronic delivery systems.
3. The key areas that the Bill will regulate are:
  - 3.1 the restrictions on public smoking
  - 3.2 the sale and advertising of tobacco products and electronic delivery systems;
  - 3.3 the prohibition on financial or other support;
  - 3.4 the prohibition of vending machines;
  - 3.5 the standardisation of the packaging and appearance of tobacco products and electronic delivery systems; and
  - 3.6 restriction on the sale of products.
4. **Restrictions on public smoking**
  - 4.1 Smoking will be prohibited in enclosed public spaces, enclosed workplaces, enclosed common areas in multi-unit residences, health facilities (except for rehabilitation facilities) and in private dwellings where the dwelling is used for commercial childcare, domestic employment or schooling and tutoring. Smoking will not be permitted in motor vehicles where there is a child under the age of 18 and there is more than one person in the vehicle.
  - 4.2 Any person who fails to comply with the restrictions on public smoking in enclosed public places or enclosed workplaces or in a public conveyance, will

be liable to a fine or a period of imprisonment not exceeding three months or to both. A person who smokes in an enclosed space that is not a public space or workplace and is within a prescribed distance from an operable window or an entrance or exit will be liable to a fine or to a period of imprisonment not exceeding one year or to both. It is unclear why smoking in some places is regarded as minor, but when smoking near a window, entrance or exit it is far more serious.

- 4.3 Oddly, it is not an offence (i.e. no penalties) for a person to smoke in a motor vehicle where there is a child under the age of 18 years, in enclosed common areas in multi-unit residences or in health facilities. This is possibly due to an oversight.
- 4.4 Property owners are still required to provide the relevant non-smoking signs and public announcements. Failure to display such signs and make such public announcements may result in a fine or to a period of imprisonment not exceeding one year or to both.
- 4.5 There will no longer be designated smoking areas in enclosed public places and in some instances smoking will be prohibited in outdoor areas. If any person is in contravention of this provision, he or she will be liable to a fine or to a period of imprisonment not exceeding one year or to both.

## 5. **Sale and advertising**

- 5.1 All commercial communications between a manufacturer or importer of a product to the trade partners, business partners, employees and shareholders of that manufacturer or importer must only contain factual information about the product. Failure to comply with such requirements may result in fine or to a period of imprisonment not exceeding one year or to both.
- 5.2 The advertisement or promotion of tobacco products and electronic delivery systems, including products used in connection with tobacco products and electronic delivery systems such as pipes, water pipes and any components of the tobacco products or electronic delivery systems, will be prohibited. Advertisement and promotion includes offering the products or devices as gifts or as an incentive in a contest or sporting event and directly targeting an individual with promotional material including through electronic communication and face-to-face contact. Encouraging or rewarding a retailer to sell a relevant product, to achieve a certain sales volume, exclusively sell a

product or to promote a relevant product will be prohibited. Products will not be offered or distributed for free or at a discount, other than normal trade discounts.

- 5.3 Tobacco products and electronic delivery systems will be prohibited from being sold, placed or displayed at educational establishments, hospitality, sporting, entertainment, music, dance or social events. No product branding will be allowed to be displayed at retail outlets, in public venues or on motor vehicles.
- 5.4 The major change under this heading when compared to the TPCA is that a retailer will not be permitted to display a product, but may make the product available upon request to a person over the age of 18.
- 5.5 Failure to implement or comply with the advertising, promotion, sponsorship and display requirements may result in a fine or a period of imprisonment not exceeding five years or both.

## **6. Prohibition on financial or other support**

- 6.1 The provision of financial or other support by manufacturers, importers, distributors or suppliers, whether in exchange for publicity or not, will be prohibited by the Bill. This includes financial contributions towards artists, sporting teams, welfare organisations and in respect of any corporate social responsibility activity. This provision will seriously impact on the corporate social investment programmes of product manufacturers and accordingly on their BEE status.
- 6.2 A person who infringes this provision will be liable to a fine or to a period of imprisonment for a period of 5 years or to both.

## **7. Prohibition on vending machines**

- 7.1 Automated vending machines for tobacco products and electronic delivery systems, including products used in connection with the tobacco products and electronic delivery systems, will be entirely prohibited in terms of the Bill.
- 7.2 A person who infringes this provision will be liable to a fine or imprisonment not exceeding one year, or to both upon conviction.

## 8. Plain packaging and health warnings

8.1 All tobacco products will be subject to standardised packaging and labelling. While the Minister of Health ("**the Minister**") will prescribe the specific regulations -

8.1.1 the packaging will be uniform in colour, size, shape and texture; and

8.1.2 the brand name and product name will appear in a standard colour and font with mandatory information including the manufacturer's details, health warning, tax stamps, and the quantity of the package.

8.2 All tobacco products will be required to include a health warning, a statement regarding the product's constituents and a photograph or picture which can be related to the health warning. All tobacco products will be required to contain a leaflet that must contain information, including but not limited to the harmful effects (health, social and economic) of the product, the harmful constituents of the product and the beneficial effects of stopping the use of the product.

8.3 The Bill provides that the Minister may issue regulations creating specific rules regarding the packaging and labelling of electronic delivery systems. No guidelines are provided in the Bill, so the packaging and labelling will be entirely in the Minister's discretion.

8.4 An infringement of this section of the Bill may result in a fine or a period of imprisonment not exceeding five years or both upon conviction.

## 9. Restriction on the sale of products

No tobacco products or electronic delivery systems will be permitted to be sold, offered or distributed via post, the internet, any electronic medium or any other remote means. Failure to comply with this provision may result in a fine or a period of imprisonment not exceeding one year or both upon conviction.

## 10. Conclusion

The Bill largely brings electronic delivery systems under the same regulatory fold as tobacco products. The Bill goes further than the TPCA in creating additional regulatory constraints on public smoking and the advertising and sale of tobacco products and electronic delivery systems. Automated vending machines and charitable contributions will be entirely prohibited and the packaging of all tobacco products will be standardised.