

CHAPTER 65:04
CONTROL OF SMOKING
ARRANGEMENT OF SECTIONS

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Act 32, 1992,
Act 28, 2004.

An Act to control the smoking of tobacco and tobacco products.

[Date of Commencement: 1st July, 1993]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Control of Smoking Act.

2. Interpretation

In this Act, unless the context otherwise requires-

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

"public service vehicle" has the same meaning as in the Road Traffic Act, and shall, for the purposes of this Act, include a private hire vehicle as defined in that Act;

"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;

"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;

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

"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 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.

PART II

Smoking in public places, workplaces, etc. (ss 3-12)

3. Duty of persons to protect other persons from tobacco smoke (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.

4. Smoking in private or public workplaces and in public places (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;
- (r) any facility that employs paid personnel; and
- (s) 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 workplace 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. Signs required (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.

(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 letleletswe*"; and
- (b) carry the following warning-
"WARNING: smoking is dangerous to your health".

6. Obligations of owners or occupiers of public places, workplaces and public service vehicles

(1) The owner or occupier of any public place or workplace, 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 workplace, 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.

7. Smoking in certain outdoor spaces 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.

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

9-12. ... PART III

Promotion and Advertising (s 13)

13. Advertising of tobacco and tobacco products

(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 (ss 14-15)

14. Establishment of health committees

(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.

15. Complaints

(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

General Provisions (ss 16-17) 16. Offences

(1) Any person who smokes in any room or area in contravention of the provisions of Part II hereof shall be guilty of an offence and liable to a fine of P1 000.

(2) Any employer, restauranteur, 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 this Act for which no specific penalty has been prescribed shall be guilty of an offence and liable to a fine not exceeding P1 000.

16A. Structural changes (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.

(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.

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

17. ...