

**TOBACCO (PROMOTION AND
SALE) BILL 1983.**

(No. of 1983.)

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A BILL

F O R

AN ACT to prevent the advertisement and promotion of smoking and of certain products associated with smoking, to prevent the sale of such products to young persons, and for incidental and other purposes, and to repeal the Sale of Tobacco Act 1916-1964.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the 5 same, as follows:—

1. This Act may be cited as the *Tobacco* Short title.
(Promotion and Sale) Act 1983.

No. 33—1.

Commence-
ment.

2. (1) Subject to subsection (2) of this section, this Act shall come into operation on the 90th day after the day on which it is assented to by the Governor.

5 (2) Sections 4, 5, 6, and 7 shall come into operation on the day that is one year after the day on which it is assented to by the Governor.

Interpreta-
tion.

3. In this Act unless the contrary intention appears—

10 “exempt newspaper” means a newspaper that is printed, and copies of which are published, outside the State and is brought into the State, other than a newspaper—

15 (a) that forms part of, or is supplemental to, a newspaper—

(i) that is printed within the State; or

20 (ii) that is printed outside the State but copies of which are not published outside the State;

25 (b) that is supplied or distributed to persons as an incident of the supply or distribution, whether at the same or another time, of a newspaper referred to in paragraph (a) of this definition;

30 (c) the sole or main purpose of which is to commend the qualities of any brand of tobacco product or any brand of smoking accessory; or

(d) that is the subject of a current declaration under section 4 (2);

“newspaper” includes a copy of any magazine, journal or periodical, or any other publication copies of which contain—

- (a) news, intelligence, information, or reports of occurrences; or 5
- (b) remarks, observations, or comments in relation to any news, intelligence, information, or occurrences or to any other matter of interest to the public or any section of the public, 10

and are printed in any language and published at regular or irregular intervals;

“to publish” includes to communicate to the public or any section of the public by the use of the written or spoken word, by pictorial presentation, or by any other means whether— 15

- (a) through the medium of—
 - (i) any notice, circular, pamphlet, brochure, programme, price list, label, wrapper or other document; 20
 - (ii) any poster, placard, notice, or other documents affixed, posted up, or displayed on any wall, billboard, or hoarding, or on any other object or thing; 25
- (b) through any medium involving the production or transmission of sound or light or any other signal or device from which any sound or visual image may be derived; or 30
- (c) in any other manner whatsoever,

except that it does not include to communicate through broadcasting or televising under the Broadcasting and 35

Television Act 1942 of the Parliament of the Commonwealth or any Act amending that Act or substituted therefor or under a licence granted under any such Act;

5 "section" means section of this Act;

"smoking" means the practice that involves inhaling and expelling, or puffing, the smoke of a tobacco product;

10 "smoking accessory" means any accessory, instrument, or thing primarily intended to be used for the purpose of smoking or intended to be used principally for the preparation, other than in the course of carrying on a business of processing or manufacturing a tobacco product, of tobacco products for smoking, and includes—

20 (a) cigarette papers and other like wrappings, cigarette rollers, cigarette holders, filters, pipes and pipe cleaners; and

(b) any thing prescribed to be a smoking accessory for the purposes of this Act;

25 "subsection" means subsection of the section in which the word is used;

30 "tobacco product" means cigarette or cigar of any composition whatsoever, or tobacco in any form whatsoever and includes synthetic tobacco or any tobacco substitute;

35 "vending machine" means any machine, device, or contrivance that is constructed to contain tobacco products that may be obtained therefrom by an operation that involves the insertion in the machine, device, or contrivance of a coin, token, or similar object.

4. (1) Section 5 (1) does not apply to any thing— Exemption.

- (a) published in an exempt newspaper; or
- (b) that, in accordance with a requirement imposed by or under any other Act of the Parliament of the State or the Commonwealth, appears on any tobacco product or smoking accessory or on any package, carton, or other packaging or container in which any tobacco product or smoking accessory is sold or exposed for sale, or that appears thereon and is prescribed as being exempt from section 5 (1). 5
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(2) The Minister may, by notice published in the *Government Gazette*, declare that any newspaper described in the notice that would otherwise be an exempt newspaper shall not, for so long as the declaration remains in force, be an exempt newspaper for the purposes of this Act. 15

(3) The Minister may, by notice published in the *Government Gazette*, revoke any declaration under subsection (2). 20

5. (1) Subject to section 4, a person who publishes any thing that expressly or impliedly urges or encourages, or is calculated to lead to, induce, or promote— 25 Certain promotions prohibited.

- (a) the purchase of any tobacco product;
 - (b) the use for the purpose of smoking of any tobacco product or smoking accessory; or
 - (c) smoking, generally, 30
- commits an offence.

(2) A person who, for the purpose of inducing or promoting—

- (a) the purchase of any tobacco product;

(b) the use for the purpose of smoking of any tobacco product or smoking accessory; or

(c) smoking, generally,

5 offers, gives, or distributes a free sample of any tobacco product to any member of the public except to a person who is associated, concerned, or connected other than as a consumer with the distribution or sale of tobacco products commits an offence.

10 (3) A person who, in connection with the purchase of a tobacco product or smoking accessory or for the purpose of promoting the purchase of a tobacco product or smoking accessory—

15 (a) supplies to the purchaser or any other person—

(i) any prize, gift, or other benefit;

20 (ii) any stamp, coupon, token, voucher, ticket, or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for, a prize, gift, or other benefit (whether the entitlement or qualification is absolute or conditional); or

25 (iii) any thing which, or a copy or facsimile of which, is a necessary prerequisite to participation in, or is likely to confer an advantage in, any game, contest, or other activity
30 in which a participant may become entitled to, or may qualify for, a prize, gift, or other benefit (whether the entitlement or qualification is absolute or
35 conditional); or

(b) conducts a scheme prescribed for the purposes of this subsection as being a

scheme to promote the purchase of a tobacco product or smoking accessory or to promote smoking generally,

commits an offence.

(4) Subsection (3) (a) (ii) and (iii) apply to any thing notwithstanding that it may be constituted by, or incorporated on or in the tobacco product or smoking accessory purchased, or the package, carton, or other packaging or container in which the tobacco product or smoking accessory is purchased. 5

(5) In proceedings for an offence against subsection (3) it is a defence for the person charged to prove that the benefit or thing supplied, or participation in the scheme, was only incidentally connected with the purchase of a tobacco product or smoking accessory and that equal opportunity to receive the benefit or thing, or to participate in the scheme, was afforded generally to persons who purchased products whether or not they were tobacco products or smoking accessories. 15 20

(6) A person who causes or takes part in—

- (a) the publication contrary to subsection (1) of any thing;
- (b) the offering, giving or distribution contrary to subsection (2) of a free sample; or 25
- (c) the supply of any benefit or thing, or conducting of a scheme, where the supply of that benefit or thing or the conducting of that scheme is contrary to subsection (3), 30

commits an offence.

(7) A person who is convicted of an offence under this section is liable—

- (a) where that person has not previously been convicted of an offence under this section, to a fine not exceeding \$1 000; 35
- (b) in any other case, to a fine not exceeding \$2 000. 40

Continua-
tion of
offending
conduct.

6. Where a continuing state of affairs is created by a contravention of section 5 and that state of affairs continues after conviction and after it could reasonably have been terminated or removed, the person concerned is guilty of a further offence and is liable to a further fine not exceeding \$1 000 in respect of each day on which that offence so continues.

Proof of
offence.

7. (1) Where in proceedings for an offence under section 5 it is proved that any thing published includes—

- 15 (a) the name of any tobacco product or smoking accessory, whether or not as a part of any other name, description, or expression;
- (b) any name that is a part of the name of any tobacco product or smoking accessory; or
- 20 (c) any name, word, symbol, design, or other form of presentation that is commonly associated with any tobacco product or smoking accessory,

that thing shall, in the absence of evidence to the contrary, be taken to be calculated to promote the purchase of, or use for the purpose of smoking of, 25 a tobacco product or smoking accessory.

(2) Subsection (1) does not apply to—

- 30 (a) a sign on, in, or in the vicinity of, any premises or place used by a person for the purposes of business where the sign bears only the name of the person using the premises if—
- (i) the sign complies with such regulations as may be made as to the type, size, content, and location of the sign; and
- 35

- (ii) the number of such signs on, in, or in the vicinity of the premises or place is not more than is permitted by the regulations;
- (b) any notice on, in, or in the vicinity of, any premises or place where any tobacco product or smoking accessory is sold that states the name of the brand of any such tobacco product or smoking accessory if—
 - (i) there is not more than one such notice on, in, or in the vicinity of those premises or that place; and
 - (ii) the notice does not exceed 2 500 cm² in area and is not self-illuminated,

and, without limiting the other forms of words that may be published without contravening section 5 (1), the words “.....(brand name) sold here” in any such notice shall not be taken to be calculated to promote the purchase of, or use for the purpose of smoking of, a tobacco product or smoking accessory; or

- (c) the publication on any tobacco product or smoking accessory or on any package, carton, or other packaging or container in which any tobacco product or smoking accessory is sold or exposed for sale, of any thing referred to in subsection (1) (a), (b) or (c).

(3) Where in proceedings for an offence under section 5 it is proved that any person publishes a statement or implication to the effect that—

- (a) a sporting, cultural, or recreational event was, is, or is to be sponsored, financed, or promoted in any way;
- (b) a scholarship, prize, or reward for human endeavour was, is, or is to be funded or given; or

(c) a donation of any kind to any person or body of persons was, is, or is to be made,

by a person who processes a tobacco product or manufactures a tobacco product or smoking accessory that statement or implication shall, in the absence of evidence to the contrary, be taken to be calculated to promote the purchase of, or use for the purpose of smoking of, a tobacco product or smoking accessory.

Sale to young persons prohibited.

10 8. A person who sells, gives, or supplies any tobacco product or smoking accessory—

(a) to a person under the age of 16 years; or

(b) to any other person for the use of a person under the age of 16 years,

15 commits an offence and is liable to a fine not exceeding \$200.

Operation of vending machines.

9. A person shall not obtain or attempt to obtain from a vending machine a tobacco product if—

(a) that person is under the age of 16 years; or

20 (b) the tobacco product is for the use of a person under the age of 16 years.

Penalty: \$100.

Warnings.

10. (1) The occupier of any premises at which any tobacco product or smoking accessory is sold by retail shall ensure that a statement as to the general effect of section 8, including the penalty provided for therein, is kept conspicuously displayed at the place at which tobacco products or smoking accessories are sold, in such a position as to be readily noticed by persons intending to purchase any tobacco product or smoking accessory.

Penalty: \$100.

(2) A person who owns a vending machine or, where the vending machine is leased, the lessee of the vending machine shall ensure that there is kept conspicuously displayed on the front of the vending machine a statement as to the general effect of sections 8 and 9, including the respective penalties provided for therein. 5

Penalty: \$100.

(3) Regulations may be made as to the type, size, content, and location of notices in which statements required by subsection (1) or (2) shall be made and, where such regulations have been made, a statement contained in a notice that does not meet the relevant requirements of such regulations fails to satisfy the requirements of subsection (1) or (2), as the case may be. 10 15

11. Where a body corporate commits an offence under this Act, every director or other officer concerned in the management of the body corporate is also guilty of, and liable to the penalty provided for, that offence. 20

Liability of
officers of
bodies
corporate.

12. In proceedings for an offence under this Act it is a defence for the person charged—

Defence to
prosecution.

- (a) where it is charged that he is guilty under section 11 as a director or other officer concerned in the management of a body corporate, to prove that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the committing of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances; 25 30
- (b) where the alleged offence is against section 5 (6), to prove that he did not know and had no reason to believe that his conduct was a part of a contravention of section 5 (1), (2) or (3), as the case may be; 35

- 5 (c) where the alleged offence is against section 8 (a) to prove that he believed, on reasonable grounds, that the person to whom he sold, gave, or supplied the tobacco product or smoking accessory was not under the age of 16 years;
- 10 (d) where the alleged offence is against section 8 (b) or 9 (b) to prove that he believed, on reasonable grounds, that the person for whose use the tobacco product or smoking accessory was sold, given, or supplied, or for whose use the tobacco product was obtained or attempted to be obtained from a vending machine, as the case may be,
- 15 was not under the age of 16 years.

Protection
from civil
actions.

13. Civil proceedings shall not be brought against a person for—

- 20 (a) the failure or refusal to do any thing the doing of which would constitute an offence against this Act; or
- (b) the doing of any thing failure to do which would constitute an offence against this Act.

Regulations.

25 14. The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Repeal.

15. The Sale of Tobacco Act 1916-1964 is repealed.