

Tobacco Products Control Act 83 of 1993 (TPCA)

Topic: Health and Safety

IN A CALABASH

Introduction

The Tobacco Products Control Act (TPCA) regulates the sale, marketing and use of tobacco products in South Africa. It also prohibits the smoking of tobacco products in public places in South Africa.

Objectives of the Act

The objective of the TPCA is to protect persons from the adverse effects of tobacco smoke. In order to do this, the TPCA makes it illegal to smoke tobacco products in public places, including bars, pubs, taverns, night clubs, casinos, restaurants, hotels, guest houses, bed and breakfasts, game lodges, passenger trains, passenger ships, workplaces, sport stadiums and airports.

Application of the Act and its implication to Tourism

The TPCA applies to all people and entities in South Africa, with no exceptions. In particular, any person who operates a retail outlet which sells tobacco must comply with the provisions pertaining to the sale of tobacco products.

Further to the above, when a person operates any premises which are accessible to the public, such a person must ensure that the smoking of tobacco products in these places is controlled.

Summary of the provisions of the Act

Control over smoking of tobacco products

The TPCA prohibits the smoking of any tobacco product in any public place.

Exemptions

Whilst smoking in a public place is prohibited, smoking is permitted–

- in private dwellings, unless that dwelling is run as a commercial child care or schooling facility as stated above;
- in tobacco shops; and
- in designated smoking areas, subject to certain rules and specifications.

No smoking in a workplace

An employer must ensure that

- employees do not smoke in the workplace without retaliation of any kind;
- non-smoking employees are not exposed to tobacco smoke in the workplace;
- it is not a condition of employment that any employee is required to work in any portion of the workplace where smoking is permitted under any circumstances; and
- employees are not required to sign any indemnity for working in any portion of the workplace where smoking is permitted.

Employers must have a written policy on smoking in the workplace and display a copy of the policy and a copy of the TPCA.

Signage

The owner of or any person in control of a public place must display signs prohibiting smoking. Public announcements may also be made in order to inform any person who enters or who is in a public place that smoking is prohibited in that place. Employers should display such signs and make such announcements in respect of a workplace.

Steps must be taken to ensure that children under the age of 18 are not in or around the vicinity of a designated smoking area.

Designated smoking areas

Designated smoking areas which can be established in offices, bars, pubs, taverns, night clubs, casinos, restaurants, hotels, guest houses, bed and breakfasts, game lodges, passenger trains, passenger ships, workplaces, sport stadiums and airports must not be larger than twenty-five percent (25%) of the floor area. These designated smoking areas must be separated from all other areas by a solid partition a sign must be on the entrance door stating 'SMOKING AREA' together with the following message:



'Smoking of tobacco products is harmful to your health and to the health of children, pregnant or breast-feeding women and non-smokers. For help to quit, phone (011) 720 3145.'

The air in the smoking area must be exhausted directly to the outside. It must not re-circulate into other areas.

Retailers

A retailer must ensure that–

- the sales unit is not on any counter accessible to the public;
- there is not more than one sales unit in any premises; and
- the display is confined to a single area not exceeding four square metres in the case of a specialist tobacconist's premises or one square metre in the case of wholesalers and retailers. Note: the area of the surface of a display of tobacco products includes the whole of the area within the perimeter of the display.

Tobacco products must only be displayed within a sales unit.

Regarding the display of cigars, these may be located in a place other than in a sales unit, provided that the cigars are—

- in a humidified container that can be accessed only by a supplier or employee of the supplier; or
- kept in a humidified room where the cigars can be accessed by a customer.

While customers are in the humidified room, they must be accompanied by the supplier or an employee of the supplier.

Only one packet of each product line of a tobacco product may be exposed for sale at any premises. In the case of items used in the consumption of tobacco, only one item of each particular product line may be displayed. In the case of a wholesaler or a retailer who only sells tobacco products in cartons, one carton of each product line may be displayed.

A package or packet must be displayed in the form in which a package or packet is available or usually available for sale.

No tobacco product should be exposed for sale within one metre of another displayed product which is designed or marketed for use by children or of confectionary. In the instance of the size of the premises being limited, then the tobacco products must be separated from the children's products, confectionary or consumables as much as possible.

In the instance of the premises of a specialist tobacconist, only one hundred tobacco products may be displayed for sale.

Price

A display of tobacco products may include the price of the products only if the price is displayed by a price ticket.

A display of tobacco products, or of the prices of tobacco products, must not include anything else about the price of a tobacco product including, for example, anything that states the price is discounted.

The information on each price ticket or price list of tobacco product must be limited to any combination of the following—

- the brand name of the product;
- the packet size by weight or by number of tobacco products contained in the packet;
- the price of the product; and
- a bar code or similar identification code or non-promotional data used in the point of sale system of the business.

This information must be in writing and have a consistent size, shape and colour throughout the text in respect of all the products displayed. The information on each price ticket or price list of tobacco product must not contain any other feature. Price tickets—

- must be of an approximate equal size but not exceeding 3 200 square millimetres);
- must be a black, standardised font not more than 15 millimetres in height;
- must be attached to or adjacent to the retail display, in the case of a product that is visibly displayed in a retail display; or
- must be adjacent to the retail display.

The display of a price list of tobacco products must

- have the title 'Tobacco products price list';
- not include the prices of any other products;
- be worded with characters which are no higher than 7 millimetres;
- have no border or frame;
- not exceed 630 square centimetres in size; and
- be limited to one price list at a sales unit or one price list for each payment point.

At a sales unit a rectangular sign must be displayed. The horizontal sides must be longer and the vertical sides must be shorter. The following message must be printed in black across the sign:



'SMOKING CAN KILL YOU' and beneath it: 'WE CANNOT BY LAW SELL TOBACCO PRODUCTS TO ANYONE UNDER 18 YEARS'

This message must be contained within a black rectangular border with a white background. It must also be no wider than an upper case letter 'I' in point size used for the words 'SMOKING CAN KILL YOU'. The message must be in the typeface known as Helvetica and in letters that are at least 2 centimetres in height and 1,5 centimetres in width.

A person must not enhance the display of any tobacco product in premises where it is sold, using

- colour coding of the premises in colours that form part of the usual packaging of the tobacco product;
- lines, borders and other visual design effects that make the display stand out;
- partial imaging or wording of the packaging of the tobacco product;
- mirrors or other reflective devices that reflect images of the tobacco product or any other product prohibited from display;
- holograms linked to the display;
- empty packets, cartons, cigarette shippers and boxes of tobacco products;
- cabinets or display cases that contain trademark, colours or wording usually used in packaging of the tobacco product, except for a device containing no designs, colours, fabrics or wording usually associated with the packaging of the tobacco product that is used to allow it to be extracted; or
- digital screens, motion pictures, movable setting, sound, scent or light or any other means that attract attention to the display.

It is important to note that these provisions may change from time to time by way of regulations.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Any non-compliance with the TPCA will result in a criminal prosecution and amounts to a criminal offence, if successfully prosecuted.

Persons in charge of public spaces must prevent smoking in those places. The required signage as detailed above must also be displayed in the public space. A failure to adhere to these provisions will result in a criminal offence and the offender will be liable on conviction to a fine of up to R50 000.

It is the duty of employers to prevent workers from being exposed to smoke in a public space or workplace and failure to do so will give rise to an offence. The fine on conviction may not exceed R100 000.

The same fine (i.e. a fine not more than R100 000) may be imposed on anyone who sells or markets cigarettes or tobacco products in contravention of the prohibitions set out under the TPCA or fails to comply with any regulation.

Any person who smokes in a public space is guilty of an offence and liable on conviction to a fine of up to R500.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

The following physical controls and practices must be in place to demonstrate compliance:

- The business must have formulated a smoking policy;
- A copy of the TPCA must be displayed at the workplace;
- Public places must have designated smoking areas with extraction fans and signage;
- The person in control of a public place must ensure that no person smokes anywhere other than in the designated smoking area in that public place;
- Employers must have a written policy on smoking in the workplace, and they must protect employees who do not want to be exposed to tobacco smoke in the workplace;
- There should be no objection to smoking policies nor any victimisation of any employee who objects to being exposed to tobacco smoke;
- A person in control of any public place may totally prohibit smoking in that place;
- It is illegal to advertise tobacco products or use any tobacco logos or company names to advertise any organisation, service, activity or event; and

- The tobacco industry and tobacco retailers are not allowed to organise, promote or fund activities.

Regarding sales and distribution of tobacco products, the following points must be noted:

- All tobacco products must be sold in a package with a health warning and a listing of the quantities of each hazardous ingredient;
- It is illegal to sell or supply tobacco products to persons below 16 years of age;
- It is illegal to distribute tobacco products for free or sell them at a discount;
- It is illegal to offer contests, free gifts and cash rebates for the sale of tobacco products; and
- Vending machines that sell cigarettes are only allowed in places that are inaccessible to persons under 16 years of age.

FURTHER INFORMATION

Regulator

The National Department of Health

Website

www.doh.gov.za