

SMOKE-FREE ENVIRONMENTS AMENDMENT BILL (NO. 2)

EXPLANATORY NOTE

THIS Bill amends the Smoke-free Environments Act 1990.

General Commentary

The principal features of the Bill are as follows:

- (a) The Bill inserts new provisions into the principal Act relating to smoking in casinos. Smoking will be permitted in the gaming area of a casino, but at least 25 percent of the area in which gambling is conducted must be designated as a smoke-free area:
- (b) The Bill amends the prohibition in the principal Act on the sale of tobacco products to minors. The principal Act currently prohibits such sales to persons who have not attained the age of 16 years. The Bill raises that minimum age to 18 years:
- (c) The Bill clarifies the extent to which that prohibition applies in circumstances where a minor seeks to make a purchase on behalf of someone to whom such products may legally be sold. It is made clear that the principal Act does not permit the sale of tobacco products to a minor who is purchasing for or on behalf of, or as agent for, a person to whom tobacco products may legally be sold:
- (d) The provisions of the principal Act relating to the sale of tobacco products from automatic vending machines are amended. The principal Act currently provides that it is an offence to permit any tobacco product to be sold by way of an automatic vending machine from any place to which persons under 16 may lawfully have access. The Bill amends this prohibition in 2 respects:
 - (i) The age limit is raised to 18 years:
 - (ii) A further provision is added to make it an offence to locate, in any place to which persons under the age of 18 may lawfully have access, any automatic vending machine that dispenses, or is capable of dispensing, tobacco products. The existing exemptions for certain premises (such as premises with club licences or on-licences) are retained:
- (e) The Bill contains new restrictions on the sale of certain tobacco products in small quantities. These restrictions are as follows:

(i) Unpackaged cigarettes (including cigarillos) may not be sold, at retail, in quantities of fewer than 10:

(ii) A minimum packet size is imposed in relation to cigarettes (including cigarillos). It will be an offence for any manufacturer, importer, distributor, or retailer to sell, or offer for sale, packets of cigarettes that contain fewer than 10 cigarettes:

(iii) A minimum packet weight is imposed in relation to loose tobacco (i.e. tobacco prepared for smoking in hand-rolled cigarettes, and pipe tobacco). It will be an offence for any manufacturer, importer, distributor, or retailer to sell, or offer for sale, loose tobacco in packets that contain less than 10 grams of loose tobacco.

The provisions do not affect the sale of cigars (other than cigarillos):

(f) The Bill makes provision for the Director-General to issue a code of practice relating to tobacco product advertising. Such a code may prescribe—

(i) The form and manner in which retailers of tobacco products may advertise tobacco products at their place of business; and

(ii) Procedures for dealing with complaints alleging a breach of the code.

The code will not replace the existing provisions in the principal Act relating to tobacco product advertising. In particular, notices displayed inside a retailer's place of business and identifying the tobacco products that are available for purchase there, and their price, will still be required to comply, at a minimum, with the requirements set out in regulations made under the principal Act:

(g) The Bill clarifies the liability of employers and principals for acts done, in contravention of the principal Act, by employees and agents.

Clause by Clause Analysis

Clause 1 relates to the Short Title and commencement. The Bill (other than **clause 9 (2)**) is to come into force on the day after assent. **Clause 9 (2)** is to come into force on **6 July 1996**.

Clause 2 amends section 2 of the principal Act, which relates to interpretation. The amendment inserts a number of new definitions, which are consequential on the amendments made by *clauses 3 and 6*.

Clause 3 inserts a *new section 13A* into the principal Act. The new section relates to smoking in casinos. At present, section 5 of the principal Act, which relates to smoking in workplaces, has the effect of prohibiting smoking in the gaming area of a casino, as this is a part of that workplace to which the public normally have access.

New section 13A provides that the holder of the casino operator's licence in respect of a casino may permit smoking in the gaming area of the casino (which is defined as that area of the casino in which gambling is conducted). However, the operator must designate at least 25 percent of the gaming area for persons who do not wish to smoke, and must ensure that people do not smoke in the designated area. In calculating the size of the gaming area, and of the smoke-free area, certain areas are not to be taken into account. These include areas within licensed premises and restaurants, that are designated as smoke-free areas pursuant to section 12 or section 13 of the principal Act.

Clause 4 amends section 17 of the principal Act, which sets out certain offences in relation to breaches of the principal Act relating to smoke-free areas. *Clause 4* inserts a *new subsection (8A)*, which makes it an offence for the holder of a casino

operator's licence to breach the provisions of the *new section 13A (2)* (as inserted by *clause 3*).

Clause 5 repeals section 30 of the principal Act (which relates to the sale of tobacco products to persons under 16), and substitutes *new sections 30 and 30A*.

New section 30: Subsection (1) raises, to 18, the minimum age of persons to whom tobacco products may lawfully be sold.

Subsection (2) provides, as a defence to a charge under *subsection (1)*, a belief, on reasonable grounds, that the person to whom the sale was made was 18 or over. This is an existing defence, and the provision is amended consequentially on the change to the minimum age in *subsection (1)*.

Subsection (3) is new, and provides that it is no defence to a charge under *subsection (1)*—

- (a) That the person to whom the sale of tobacco products was made was making the purchase for or on behalf of, or as agent for, a person to whom tobacco products may legally be sold; or
- (b) That the person selling the tobacco product believed that the purchaser was purchasing it for or on behalf of, or as agent for, such a person.

Subsection (4) relates to automatic vending machines that dispense tobacco products. *Paragraph (a)* is new, and prohibits the location of such machines in places to which persons under the age of 18 may lawfully have access. *Paragraph (b)* is an existing provision, and is amended consequentially on the change to the minimum age in *subsection (1)*. It prohibits the sale of tobacco products from such machines in places to which persons under 18 years may lawfully have access.

Subsection (5) is an existing provision, and exempts certain premises from the prohibition on the sale, from automatic vending machines, of tobacco products to underage persons. The exemption is extended to cover the new prohibition on the location of such vending machines.

Subsection (6) is an existing provision, and is amended consequentially on the change to the minimum age in *subsection (1)*. It provides that retailers of tobacco products must display a notice advising that the sale of tobacco products to persons under 18 years is prohibited.

New section 30A imposes new restrictions on the sale of tobacco products in small quantities.

Subsection (1) defines certain terms.

Subsection (2) prohibits any person from selling, or offering for sale, by retail, unpackaged cigarettes (including cigarillos) in quantities of fewer than 10.

Subsection (3) prohibits any manufacturer, importer, distributor, or retailer from selling, or offering for sale,—

- (a) Packets of cigarettes that contain fewer than 10 cigarettes;
- (b) Packets of loose tobacco (i.e. tobacco prepared for smoking in hand-rolled cigarettes, and pipe tobacco) that contain less than 10 grams of loose tobacco.

The prohibitions in *subsections (2) and (3)* do not affect the sale of cigars (other than cigarillos).

Clause 6 inserts *new sections 32A to 32E* into the principal Act. The new sections provide for the issue of a code of practice relating to tobacco product advertising.

Section 22 of the principal Act currently prohibits, subject to certain exemptions, the advertising of tobacco products. Section 23 (1) (b) of the principal Act permits retailers of tobacco products to display, in accordance with regulations made under the Act, inside the retailer's place of business, a notice identifying the tobacco products that are available for purchase there, and indicating their price.

New section 32A authorises the Director-General of Health to issue a code of practice relating to tobacco product advertising. Such a code may prescribe—

- (a) The form and manner in which retailers of tobacco products may advertise tobacco products at their place of business; and
- (b) Procedures for dealing with complaints alleging a breach of the code.

New section 32B provides that a code of practice is to have no effect unless it is approved by the Minister of Health. Certain requirements as to notification of a proposed code, and consultation with affected persons, must be met before the Minister can approve a code. When the Minister has approved a code, the Minister must publish, in the *Gazette*, a notice of the approval, and a copy of the code.

New section 32c requires the Director-General of Health to ensure that copies of a code are available for inspection by members of the public free of charge, and for purchase at a reasonable price.

New section 32D relates to the commencement of a code of practice.

New section 32E applies the provisions of *new sections 32B to 32D* to any amendment or revocation of a code of practice.

Clause 7 amends section 36 of the principal Act (which prescribes certain offences in respect of contraventions of the principal Act), by repealing subsections (6) and (7), and substituting *new subsections (6) to (7A)*.

New subsections (6) and (7) continue to prescribe offences in respect of the sale of tobacco products to persons under the minimum age prescribed in section 30 of the principal Act (as substituted by *clause 5*). A new offence is prescribed in respect of the contravention of the prohibition, in *section 30 (4) (a)* of the principal Act (as so substituted), on the location of tobacco product vending machines in places to which persons under that minimum age may lawfully have access.

New subsection (7A) creates new offences (punishable by a maximum fine of \$2,000) in respect of the contravention of *new section 30A* (as inserted by *clause 5*), which imposes restrictions on the sale of small quantities of cigarettes and tobacco.

Clause 8 repeals section 38 of the principal Act (which relates to the liability of principals and agents in respect of the provisions of the principal Act relating to tobacco product advertising), and substitutes a *new section 38*.

Subsection (1) repeats the provisions in the existing section 38.

Subsections (2) to (4) relate to the liability of employers, employees, principals, and agents, in respect of breaches of the provisions of the principal Act relating to the sale of tobacco products to persons under the prescribed minimum age.

Clause 9 contains transitional provisions. *Subclause (1)* relates to *new section 30A (3)* of the principal Act (as inserted by *clause 5*), which prescribes a minimum pack size for cigarettes and loose tobacco. Existing stocks of packets of cigarettes and loose tobacco that do not comply with the new minimum size requirements will be able to be offered for sale until 1 January 1997. For the purpose of this provision, existing stock means stock that, at the date of the introduction of the Bill, is in New Zealand, or in transit to New Zealand, or the subject of an irrevocable purchasing order by a person in New Zealand.

Subclause (2) (which is to come into force on 6 July 1996) provides that the Code of Practice on Tobacco Product Notices at Points of Sale, which was published in the *Gazette* on 6 October 1995, is deemed to be a code of practice issued under the principal Act.

Hon. Jenny Shipley

SMOKE-FREE ENVIRONMENTS AMENDMENT (NO. 2)

ANALYSIS

	<i>Code of Practice Relating to Tobacco Product Advertising</i>
Title	
1. Short Title and commencement	32A. Code of practice relating to tobacco product advertising
2. Interpretation	32B. Code to be approved by Minister
3. Smoking in casinos	32C. Availability of code
4. Offences in respect of smoking	32D. Commencement of code
5. New sections substituted	32E. Amendment and revocation of code
30. Sale of tobacco products to persons under 18 prohibited	
30A. Restrictions on sale of certain tobacco products in small quantities	7. Offences in respect of tobacco products
6. New heading and sections inserted	8. Liability of employees, employers, agents, and principals
	9. Transitional provisions

A BILL INTITULED

An Act to amend the Smoke-free Environments Act 1990

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Smoke-free Environments Amendment Act (No. 2) 1995, and shall be read together with and deemed part of the Smoke-free Environments Act 1990* (hereinafter referred to as the principal Act).

10 (2) Except as provided in section 9 (3) of this Act, this Act shall come into force on the day after the date on which it receives the Royal assent.

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

*1990, No. 108

Amendments: 1990, No. 131; 1991, No. 35; 1995, No. 2

“ ‘Casino’ means a casino in respect of which a casino premises licence is in force under the Casino Control Act 1990:

“ ‘Casino operator’s licence’ means a casino operator’s licence granted under the Casino Control Act 1990: 5

“ ‘Code of practice’ or ‘code’ means a code of practice issued under **section 32A** of this Act:

“ ‘Gaming area’, in relation to a casino, means the area of the casino in which gambling is conducted:”.

3. Smoking in casinos—The principal Act is hereby amended by inserting, after section 13, the following section: 10

“13A. (1) Notwithstanding anything in section 5 of this Act, but subject to **subsection (2)** of this section and to sections 12 and 13 of this Act, the holder of the casino operator’s licence in respect of a casino may permit smoking in the gaming area of that casino. 15

“(2) The holder of the casino operator’s licence shall ensure that—

“(a) At least 25 percent of the gaming area of the casino is designated for persons who do not wish to smoke, and shall prominently display signs accordingly; and 20

“(b) No person smokes in that area so designated.

“(3) No person shall smoke in any part of a gaming area of a casino that is designated for persons who do not wish to smoke. 25

“(4) In calculating, for the purposes of **subsection (2) (a)** of this section, the total area of the gaming area of a casino, and the percentage of the gaming area of a casino that is designated for persons who do not wish to smoke, none of the following areas shall be taken into account: 30

“(a) Any lobby or stairwell:

“(b) Any area in any licensed premises that is designated, pursuant to **section 12** of this Act, as seating for persons who do not wish to smoke:

“(c) Any area in any restaurant that is designated, pursuant to **section 13** of this Act, as seating for persons who do not wish to smoke.” 35

4. Offences in respect of smoking—Section 17 of the principal Act is hereby amended by inserting, after subsection (8), the following subsection: 40

“(8A) Every holder of a casino operator’s licence who, without reasonable excuse, fails to comply with any of the

requirements of **section 13A (2)** of this Act commits an offence and is liable,—

“(a) In the case of a body corporate, to a fine not exceeding \$4,000; or

5 “(b) In the case of an individual, to a fine not exceeding \$400.”

5. New sections substituted—The principal Act is hereby amended by repealing section 30, and substituting the following sections:

10 “**30. Sale of tobacco products to persons under 18 prohibited**—(1) No person shall sell any tobacco product to a person who has not attained the age of 18 years.

“(2) It is a defence to a charge under **subsection (1)** of this section to prove that the person who sold the tobacco product
15 believed on reasonable grounds that the person to whom it was sold was of or over the age of 18 years.

“(3) It is no defence to a charge under **subsection (1)** of this section—

20 “(a) That the person to whom the tobacco product was sold was purchasing it for or on behalf of, or as agent for, a person to whom tobacco products may legally be sold; or

“(b) That the person who sold the tobacco product believed on reasonable grounds that the person to whom it
25 was sold was purchasing it for or on behalf of, or as agent for, a person to whom tobacco products may legally be sold.

“(4) Except as permitted by regulations made under this Part of this Act, no person shall—

30 “(a) Locate, or cause or permit to be located, in any place to which a person who has not attained the age of 18 years may lawfully have access, any automatic vending machine that dispenses or is capable of dispensing tobacco products; or

35 “(b) Permit any tobacco product to be sold by way of an automatic vending machine from any place to which a person who has not attained the age of 18 years may lawfully have access.

“(5) **Subsection (4)** of this section does not apply to—

40 “(a) Any premises in respect of which a club licence is in force under the Sale of Liquor Act 1989; or

“(b) Any premises in respect of which an on-licence is in force under that Act; or

“(c) Any canteen, cafeteria, or similar facility provided by an employer for the provision of refreshments to that person’s employees during working hours.

“(6) Every 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 persons who have not attained the age of 18 years is prohibited. 5

“30A. **Restrictions on sale of certain tobacco products in small quantities**—(1) In this section and section 36 (7A) of this Act, unless the context otherwise requires,— 10

“ ‘Cigarette’ includes the tobacco product commonly known as a cigarillo:

“ ‘Loose cigarettes’ means cigarettes that are not contained in a package:

“ ‘Loose tobacco’ means— 15

“ (a) Tobacco prepared for smoking in hand-rolled cigarettes:

“ (b) Pipe tobacco.

“(2) No person shall—

“(a) Sell by retail; or 20

“(b) Offer for sale by retail—

loose cigarettes in amounts of fewer than 10 cigarettes.

“(3) No manufacturer, importer, distributor, or retailer shall sell or offer for sale—

“(a) Cigarettes in a package that contains fewer than 25
10 cigarettes; or

“(b) Loose tobacco in a package that contains less than
10 grams of loose tobacco.

“(4) Nothing in subsection (2) or subsection (3) (a) of this section applies in respect of cigars (other than cigarillos).” 30

6. New heading and sections inserted—The principal Act is hereby amended by inserting, after section 32, the following heading and sections:

“Code of Practice Relating to Tobacco Product Advertising

“32A. **Code of practice relating to tobacco product advertising**—The Director-General may from time to time issue a code of practice prescribing— 35

“(a) The form and manner in which a retailer of tobacco products may advertise tobacco products at that person’s place of business; and 40

“(b) Procedures for dealing with complaints alleging a breach of the code.

Cf. 1992, No. 122, s. 36

5 “32B. **Code to be approved by Minister**—(1) Subject to subsection (5) of this section, a code of practice shall not have any effect until it has been approved by the Minister.

“(2) The Minister shall not approve any code unless—

10 “(a) Not less than 1 month has elapsed since the publication in the *Gazette* of a notice of the intention of the Director-General to apply for approval; and

“(b) The Minister has consulted such persons as will be affected by the code, or representatives of those persons, and they have had the opportunity to consider its possible effects and to comment on those effects to the Minister; and

15 “(c) The Minister has considered any comments made to the Minister concerning those effects.

20 “(3) The Minister may approve a code of practice without complying with the requirements of paragraphs (a) and (b) of subsection (2) of this section if the Minister is satisfied that sufficient consultation has already taken place in respect of the matters in the code.

“(4) When the Minister approves a code of practice, the Minister shall—

25 “(a) Publish in the *Gazette*—

“(i) A notice of the approval; and

“(ii) A copy of the code; and

“(b) Show the date of the approval on the code.

30 “(5) The fact that the Minister has published in the *Gazette* a notice under subsection (4) (a) of this section shall be conclusive proof that the requirements of this section have been complied with in respect of the approval specified in the notice.

Cf. 1992, No. 122, s. 38

35 “32C. **Availability of code**—(1) The Director-General shall ensure that copies of any code of practice that is for the time being in force are available—

“(a) For inspection by members of the public free of charge; and

40 “(b) For purchase by members of the public at a reasonable price.

“(2) The notice of approval published in the *Gazette* pursuant to section 32B (4) (a) of this Act shall show, in relation to the code

to which it relates, a place at which copies of the code are available for inspection free of charge and for purchase.

Cf. 1992, No. 122, s. 39

“32D. **Commencement of code**—Every code of practice shall come into force on the 28th day after the date of its notification in the *Gazette* or on such later day as may be specified in the code. 5

Cf. 1993, No. 28, s. 49 (2)

“32E. **Amendment and revocation of code**—(1) The Director-General may from time to time issue an amendment or revocation of a code of practice. 10

“(2) The provisions of sections 32B to 32D of this Act, with all necessary modifications, apply in respect of any amendment or revocation of a code of practice.”

Cf. 1993, No. 28, s. 51

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7. Offences in respect of tobacco products—Section 36 of the principal Act is hereby amended by repealing subsections (6) and (7), and substituting the following subsections:

“(6) Every person commits an offence and is liable to a fine not exceeding \$2,000 who,— 20

“(a) Sells any tobacco product in contravention of section 30 (1) of this Act; or

“(b) In contravention of section 30 (4) (a) of this Act, locates, or causes or permits to be located, in any place to which a person who has not attained the age of 18 years may lawfully have access, any automatic vending machine that dispenses or is capable of dispensing tobacco products; or 25

“(b) Permits any tobacco product to be sold in contravention of section 30 (4) (b) of this Act. 30

“(7) Every retailer of tobacco products who fails, without reasonable excuse, to display the notice required by section 30 (6) of this Act commits an offence and is liable to a fine not exceeding \$2,000. 35

“(7A) Every person commits an offence and is liable to a fine not exceeding \$2,000 who,—

“(a) Sells or offers for sale any cigarettes in contravention of section 30A (2) of this Act; or

“(b) Being a manufacturer, importer, distributor, or retailer, sells or offers for sale any cigarettes or tobacco in contravention of section 30A (3) of this Act.” 40

8. Liability of employees, employers, agents, and principals—The principal Act is hereby amended by repealing section 38, and substituting the following section:

5 “38. (1) For the purposes of this Part of this Act, every person shall be deemed to advertise a tobacco product, whether he or she does so on his or her own account or as the agent or employee of any other person.

10 “(2) Subject to subsection (4) of this section, anything done by a person as the employee of another person shall, for the purposes of an offence against section 36 (6) of this Act in respect of a contravention of section 30 (1) of this Act, be treated as done by that other person as well as by the first-mentioned person, whether or not it was done with that other person’s knowledge or approval.

15 “(3) Anything done by a person as the agent of another person shall, for the purposes of an offence against section 36 (6) of this Act in respect of a contravention of section 30 (1) of this Act, be treated as done by that other person as well as by the first-mentioned person, unless it is done without that other person’s express or implied authority, precedent or subsequent.

20 “(4) In any proceedings against any person for an offence against section 36 (6) of this Act in respect of anything alleged to have been done by an employee of that person in contravention of section 30 (1) of this Act, it is a defence for that person to prove that he or she or it took such steps as were reasonably practicable to prevent the employee from doing that action, or from doing as an employee of that person acts of a class, category, or description that includes that action.”

30 **9. Transitional provisions**—(1) Nothing in section 30A (3) of the principal Act (as inserted by section 5 of this Act) applies in respect of the sale or offering for sale, before the 1st day of January 1997, of any packet of cigarettes (as defined in section 30A (1) of the principal Act), or any packet of tobacco, that is, at the 11th day of
35 **October 1995** (being the date of the introduction of the **Smoke-free Environments Amendment Bill (No. 2)**),—

(a) In New Zealand; or

(b) In transit to New Zealand; or

40 (c) The subject of an irrevocable purchasing order by a person in New Zealand.

(2) The document entitled “Code of Practice on Tobacco Product Notices at Points of Sale”, dated the 4th day of October 1995, and published in the *Gazette* on the 6th day of

October 1995, is deemed to be a code of practice issued under the principal Act, and to be in force under the principal Act, and may be amended and revoked accordingly.

(3) **Subsection (2)** of this section shall come into force on the **6th day of July 1996.**