

South Australia



**TOBACCO PRODUCTS (LICENSING) (MISCELLANEOUS)  
AMENDMENT ACT 1995**

**No. 80 of 1995**

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**ELIZABETHAE II REGINAE**

A.D. 1995

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No. 80 of 1995

An Act to amend the Tobacco Products (Licensing) Act 1986.

[Assented to 23 November 1995]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Tobacco Products (Licensing) (Miscellaneous) Amendment Act 1995*.

(2) The *Tobacco Products (Licensing) Act 1986* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Amendment of s. 4—Interpretation**

3. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "premises" the following definition:

"purchase" of tobacco products includes receipt of tobacco products in the course of a business (whether or not for valuable consideration);;

(b) by inserting after the definition of "retail" the following definition:

"sale" of tobacco products includes supply of tobacco products in the course of a business (whether or not for valuable consideration) and "sell" has a corresponding meaning;;

(c) by striking out paragraph (c) of the definition of "tobacco merchandising" and substituting the following paragraph:

(c) the possession or storage of tobacco products for or prior to sale;;

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(d) by striking out paragraph (e) of the definition of "tobacco merchandising" and substituting the following paragraph:

(e) the sale or purchase of tobacco products by wholesale or the sale of tobacco products by retail.;

(e) by striking out the definition of "tobacco merchant" and substituting the following definition:

"tobacco merchant" means a person who engages in tobacco merchandising.;

(f) by inserting after paragraph (f) of the definition of "tobacco product" "and includes any packet, carton, shipper or other device in which any of the above is contained.:";

(g) by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) If a person returns tobacco products purchased by wholesale or retail from a licensed tobacco merchant to the licensed tobacco merchant, the return of the products and the preceding sale will not be taken to be a sale or purchase of tobacco products for the purposes of Part II.

(3) If a person returns tobacco products purchased by wholesale or retail from a licensed tobacco merchant to the manufacturer or distributor of the products and the manufacturer or distributor replaces them with the same or an equivalent quantity of tobacco products of the same or a similar kind, the return of the products and the supply of the new products will not be taken to be a sale or purchase of tobacco products for the purposes of Part II.

**Amendment of s. 9—Consumption licences**

4. Section 9 of the principal Act is amended by striking out from subsection (3)(b)(ii) "16" and substituting "18".

**Amendment of s. 11—Classes and terms of licences**

5. Section 11 of the principal Act is amended—

(a) by inserting in subsection (1)(b) "or purchase tobacco products for sale except from licensed tobacco merchants" after "merchants";

(b) by inserting in subsection (3)(b) "and the relevant period were that month" after "unrestricted licence".

**Amendment of s. 13—Licence fees**

6. Section 13 of the principal Act is amended by inserting after subsection (10) the following subsection:

(11) The Commissioner may grant an extension of time for payment of a licence fee, or permit payment of a licence fee to be made by instalments.

**Amendment of s. 15—Declarations to be obtained from purchasers**

7. Section 15 of the principal Act is amended by striking out from subsection (1) "shall obtain from every person who purchases a tobacco product by retail from the merchant" and substituting "must not sell tobacco products to a person by retail without obtaining from that person".

**Amendment of s. 16—Notice to be displayed for the information of prospective purchasers**

8. Section 16 of the principal Act is amended by striking out from subsection (1) "shall display a notice or notices prominently in the merchant's premises" and substituting "must not engage in tobacco merchandising unless a notice or notices are prominently displayed in the premises used by the merchant for tobacco merchandising".

**Substitution of s. 17**

9. Section 17 of the principal Act is repealed and the following section is substituted:

**Notice to be given to Commissioner**

17. (1) A person must not act as a tobacco merchant within the State unless the person has given notice to the Commissioner in the manner and containing the information prescribed by regulation—

- (a) not more than two months before commencing to so act; and
- (b) at not more than two monthly intervals while continuing to so act.

Penalty: \$20 000.

(2) Subsection (1) does not apply to a person if the person is a licensed tobacco merchant.

**Substitution of Division**

10. Division III of Part IV of the principal Act is repealed and the following Division is substituted:

**DIVISION III—INSPECTORS**

**Identification of inspectors**

22. (1) An inspector, other than a member of the police force, must be issued with an identity document—

- (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an inspector for the purposes of this Act.

(2) An inspector must, at the request of a person in relation to whom the inspector intends to exercise any powers under this Act, produce for the inspection of the person—

- (a) in the case of an inspector who is a member of the police force and is not in uniform—his or her certificate of authority; or
- (b) in the case of an inspector who is not a member of the police force—his or her identity document.

**Powers of inspectors**

22a. (1) An inspector may—

- (a) enter and remain on premises and inspect the premises and any part of or thing in or on the premises if the inspector reasonably suspects that the premises are being used for tobacco merchandising or that records relating to tobacco merchandising are being kept on the premises;

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- (b) with the authority of a warrant issued under this Division or in circumstances in which the inspector reasonably believes that immediate action is required in order to prevent destruction of evidence of an offence against this Act, use reasonable force to break into or open premises and any part of or thing in or on the premises;
- (c) require a person to produce a record that the inspector reasonably suspects contains information relating to tobacco merchandising, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process;
- (d) examine, copy or take extracts from a record that the inspector reasonably suspects contains information relating to tobacco merchandising or require a person to provide a copy of such a record;
- (e) seize and retain tobacco products or records if the inspector reasonably suspects that an offence against this Act has been committed in relation to the products or records or that the products or records may afford evidence of an offence against this Act;
- (f) if the inspector reasonably suspects that a person has sold or purchased tobacco products or otherwise engaged in tobacco merchandising in contravention of this Act, seize and retain all tobacco products on or adjacent to premises that the inspector reasonably suspects are being used by the person for tobacco merchandising;
- (g) require a person who the inspector reasonably suspects has committed an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- (h) require a person who the inspector reasonably suspects has knowledge of matters relating to tobacco merchandising to answer questions in relation to those matters;
- (i) require a person holding or claiming to hold a licence to produce it for inspection;
- (j) give directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with the administration and enforcement of this Act.

(2) A magistrate may issue a warrant for the purposes of subsection (1) if satisfied that the warrant is reasonably required for the administration or enforcement of this Act.

(3) In the exercise of powers under this Act an inspector may be assisted by such persons as he or she considers necessary in the circumstances.

**Offence to hinder, etc., inspectors**

**22b. A person who—**

- (a) hinders or obstructs an inspector, or a person assisting an inspector, in the exercise of powers conferred by this Act; or

- (b) uses abusive, threatening or insulting language to an inspector, or a person assisting an inspector; or
- (c) refuses or fails to comply with a requirement or direction of an inspector under this Division; or
- (d) when required by an inspector under this Division to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an inspector,

is guilty of an offence.

Penalty: \$20 000.

#### **Self-incrimination**

**22c.** (1) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a record or information as required under this Division on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(2) If compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a record or information might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce, or provide a copy of, a record or information—the fact of production, or provision of a copy of, the record or the information (as distinct from the contents of the record or the information); or
- (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings under this Act).

#### **Powers in relation to seized tobacco products**

**22d.** (1) If tobacco products are seized under this Division, the following provisions apply:

- (a) the Commissioner may, if satisfied that it is necessary to do so to avoid loss due to the deterioration of the products, determine that the products are forfeited to the Crown and sell the products by public tender;
- (b) apart from paragraph (a), the products will be forfeited to the Crown if a court convicts a person of an offence against this Act in relation to the products, unless the court determines that the circumstances of the offence were trifling;
- (c) subject to this section, the owner of the products will be entitled to recover the products or, if the products have been forfeited by determination of the Commissioner or have deteriorated, will be entitled to be paid compensation by the Crown in respect of the products—

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- (i) if a prosecution for an offence against this Act in relation to the products has been commenced but—
    - (A) the defendant is acquitted; or
    - (B) the prosecution is withdrawn or lapses; or
    - (C) the court hearing the proceedings determines that the circumstances of the offence were trifling; or
  - (ii) if—
    - (A) a prosecution for an offence against this Act in relation to the products has not been commenced within three months of the date of seizure; and
    - (B) the District Court determines, on application by the owner, that the justice of the case requires that the products be returned or that compensation be paid;
- (d) at the end of the period of three years from the date of seizure—
- (i) if the products have not been forfeited or returned to the owner, they are forfeited to the Crown; and
  - (ii) in any case, the owner will not have any right to recover the products or be paid compensation in respect of the products (other than a right that has already arisen or been determined under paragraph (c));
- (e) if the products are forfeited otherwise than under paragraph (a), the Commissioner may sell the products by public tender;
- (f) any compensation payable under this section in respect of the products will be in an amount equal to the consideration paid by the owner of the products when he or she purchased them or, where the owner is the manufacturer of the products, their value (determined on the basis provided under section 14 for the purpose of assessing licence fees) as at the date of seizure;
- (g) the owner of the products has no right to recover the products or be paid compensation in respect of the products apart from under this section.

(2) If tobacco products, when seized under this Division, are on or adjacent to premises that are being used for tobacco merchandising by a person who has sold or purchased tobacco products or otherwise engaged in tobacco merchandising in contravention of this Act, any such contravention by the person is, for the purposes of subsection (1), to be taken to be an offence against this Act in relation to the products so seized.

**Amendment of s. 24—Secrecy**

11. Section 24 of the principal Act is amended by inserting after subparagraph (ii) of paragraph (c) the following subparagraph:

- (iii) the Comptroller-General of the Australian Customs Service;

**Insertion of s. 24aa**

**12.** The following section is inserted in Part V of the principal Act before section 24a:

**Register of licences**

**24aa.** (1) The Commissioner must cause a register to be kept of licensees under this Part.

(2) The register must be kept available for public inspection during ordinary office hours at a place approved by the Minister.

**Amendment of s. 27—Keeping of records**

**13.** Section 27 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

(1) Subject to subsection (2), a person who engages or has engaged in tobacco merchandising—

(a) must keep records of his or her dealings in tobacco products in accordance with the regulations; and

(b) must preserve those records for a period of 5 years or a lesser period determined by the Commissioner.

Penalty: \$10 000.

(1a) Subject to subsection (2), where tobacco products are being transported by a person prior to their sale by retail, the person—

(a) must keep a record containing the prescribed particulars in the vehicle being used to transport the tobacco products whilst they are being transported; and

(b) must preserve those records for a period of 5 years or a lesser period determined by the Commissioner.

Penalty: \$10 000.

**Insertion of s. 29a**

**14.** The following section is inserted after section 29 of the principal Act:

**Invoice to be prepared**

**29a.** A person selling tobacco products by wholesale must prepare and tender to the purchaser an invoice containing the prescribed particulars in respect of the sale.

Penalty: \$10 000

**Insertion of s. 31a**

**15.** The following section is inserted in the principal Act after section 31:

**Recovery of amounts payable under Act**

**31a.** (1) An amount payable under this Act may be recovered by the Commissioner, as a debt due to the Crown, in a court of competent jurisdiction.



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(2) A certificate purporting to be signed by the Commissioner and stating that a specified amount is an amount payable under this Act in respect of a specified person is admissible in proceedings for the recovery of that amount and will, in the absence of proof to the contrary, be proof of the amount payable.

**Amendment of s. 32—Evidentiary provisions**

16. Section 32 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) If, in proceedings for an offence against this Act, it is proved that a person purchased or was in possession of more than a prescribed quantity of tobacco products it will be presumed, in the absence of proof to the contrary, that the person purchased or was in possession of the tobacco products for the purposes of sale.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor