

Version
as at 28 November 2021



Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020

Public Act 2020 No 19
Date of assent 28 May 2020
Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Health.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020.

2 Commencement

This Act comes into force on the day that is 18 months after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Smoke-free Environments Act 1990 (the **principal Act**).

Part 1

Amendments to principal Act

4 Section 2 amended (Interpretation)

In section 2, definition of **enforcement officer**, replace paragraph (a) with:

(a) a person appointed under section 91; or

Section 4: replaced, on 28 November 2021, by section 31(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

5 Section 3A amended (Purposes of this Act)

In section 3A(2), after “1,”, insert “1A,”.

Section 5: replaced, on 28 November 2021, by section 31(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

6 Section 5 amended (Smoking and vaping in workplaces prohibited)

After section 5(2), insert:

- (3) Nothing in this section permits smoking or vaping in a vehicle carrying child occupants (*see* section 20D).

Section 6 heading: amended, on 28 November 2021, by section 31(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6: amended, on 28 November 2021, by section 31(4) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

7 Section 5A amended (Employer may permit smoking or vaping in vehicle with consent of users)

In section 5A, insert as subsection (2):

- (2) Nothing in this section permits smoking or vaping in a vehicle carrying child occupants (*see* section 20D).

Section 7 heading: amended, on 28 November 2021, by section 31(5) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 7: amended, on 28 November 2021, by section 31(6) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

8 Section 9 amended (Smoking and vaping restricted in passenger service vehicles)

After section 9(4), insert:

- (5) Nothing in this section permits smoking or vaping in a vehicle carrying child occupants (*see* section 20D).

Section 8 heading: amended, on 28 November 2021, by section 31(7) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 8: amended, on 28 November 2021, by section 31(8) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

9 New Part 1A inserted

After section 20A, insert:

Part 1A

Smoke-free motor vehicles carrying child occupants

20B Purpose of this Part

The purpose of this Part is to limit children's exposure to second-hand smoke and other emissions by prohibiting smoking or vaping when they are in motor vehicles.

20C Interpretation for this Part

In this Part, unless the context otherwise requires,—

child occupant means a person under the age of 18 years who is in a motor vehicle

motor vehicle has the meaning given to it in section 2(1) of the Land Transport Act 1998

road has the meaning given to it in section 2(1) of the Land Transport Act 1998.

20D Smoking or vaping prohibited in motor vehicle carrying child occupant

- (1) A person must not smoke or vape in a motor vehicle, whether moving or stationary, that is on a road and has a child occupant.
- (2) However, a person may smoke or vape in a motor vehicle if—
 - (a) the person is the only occupant of the motor vehicle who is under the age of 18 years; or
 - (b) the motor vehicle is—
 - (i) manufactured for use as an occasional or permanent dwelling; and
 - (ii) stationary on a road and in use as a dwelling.
- (3) A person who contravenes subsection (1) commits an infringement offence and is liable to—
 - (a) an infringement fee of \$50; or
 - (b) a fine imposed by a court not exceeding \$100.
- (4) Sections 88 to 90 apply to the infringement offence in subsection (3) as if—
 - (a) the infringement offence were an infringement offence defined in section 87; and
 - (b) the infringement fee in subsection (3)(a) were an infringement fee specified in section 87 for the infringement offence; and
 - (c) a constable were the enforcement officer referred to in those sections.

20E Constable's powers

- (1) A constable who sees a person smoking or vaping in a motor vehicle that is on a road and that appears to have a child occupant may do 1 or more of the following, if the constable is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it:
 - (a) signal or request the driver of the motor vehicle to stop the vehicle as soon as practicable;
 - (b) require the driver to remain stopped for as long as is reasonably necessary for the constable to make the inquiries and complete the exercise of powers under this section;
 - (c) require the person who is smoking or vaping to stop smoking or vaping in the motor vehicle;

- (d) require any person who is smoking or vaping or appears to be aged under 18 years to provide the person's—
 - (i) full name; and
 - (ii) full address; and
 - (iii) date of birth; and
 - (iv) occupation; and
 - (v) telephone number.
- (2) A constable who sees a person smoking or vaping in a motor vehicle that is on a road and that appears to have a child occupant may do 1 or more of the following, if the constable is in another vehicle following the motor vehicle:
 - (a) by displaying flashing blue, or blue and red, lights or sounding a siren, require the driver of the other vehicle to stop;
 - (b) require the driver to remain stopped for as long as is reasonably necessary for the constable to make the inquiries and complete the exercise of powers under this section;
 - (c) require the person who is smoking or vaping to stop smoking or vaping in the motor vehicle;
 - (d) require any person who is smoking or vaping or appears to be aged under 18 years to provide the person's—
 - (i) full name; and
 - (ii) full address; and
 - (iii) date of birth; and
 - (iv) occupation; and
 - (v) telephone number.
- (3) Despite subsection (1), a constable must not take either of the actions referred to in subsection (1)(c) and (d) if the motor vehicle is—
 - (a) manufactured for use as an occasional or permanent dwelling; and
 - (b) stationary on a road and in use as a dwelling.

Offences

20F Offences in respect of constables

A person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, if the person—

- (a) intentionally obstructs, hinders, or resists a constable exercising or attempting to exercise powers under section 20E; or
- (b) intentionally fails to comply with a requirement under section 20E; or
- (c) when required under section 20E(1)(d) or (2)(d) to give information, gives information the person knows to be false or misleading.

Section 9: amended, on 28 November 2021, by section 31(9) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 9: amended, on 28 November 2021, by section 31(10) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 9: amended, on 28 November 2021, by section 31(11) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 9: amended, on 28 November 2021, by section 31(12) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 9: amended, on 28 November 2021, by section 31(13) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 9: amended, on 28 November 2021, by section 31(14) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 9: amended, on 28 November 2021, by section 31(15) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 9: amended, on 28 November 2021, by section 31(16) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

10 Section 38B amended (Commission of infringement offences)

[Repealed]

Section 10: repealed, on 28 November 2021, by section 31(17) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Part 2

Amendment to Summary Proceedings Act 1957

11 Summary Proceedings Act 1957 amended

- (1) This section amends the Summary Proceedings Act 1957.
- (2) In section 2(1), definition of **infringement notice**, paragraph (jg), after “section”, insert “20D or”.

Section 11(2): replaced, on 28 November 2021, by section 31(18) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Notes

1 *General*

This is a consolidation of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62): section 31