

[Act 1996 No 33]



New South Wales

Public Health Amendment (Tobacco) Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to change the defence to the offence of selling tobacco to a person under 18 by providing a means for the proof of age of persons purchasing tobacco. This is to be done by extending the application of cards and other documents used for that purpose in relation to liquor sales, as provided for under the *Liquor Act 1982*. The defence will only be available if the customer is over 14. Employers and other persons are also to be liable for the actions of employees in selling tobacco to persons under 18.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *Public Health Act 1991*.

Schedule 1 Amendments

Schedule 1 [1] changes the defence to the offence of selling tobacco to a person under 18.

Currently, it is a defence if the court is satisfied that the defendant believed, on reasonable grounds, that the person to whom the tobacco was sold was over 18. The new provisions provide that it is a defence if the person to whom the tobacco was sold was over 14 and documentary evidence was produced to the defendant that might reasonably be accepted as applying to the person to whom the tobacco was sold and as proving that the person was at least 18. Documentary evidence for this purpose includes the kind of evidence that may be sought in relation to liquor sales, such as a driver's licence, a passport or a "proof of age" card issued by the Roads and Traffic Authority and may include other evidence.

Environmental health officers (who have enforcement functions under the *Public Health Act 1991*) are to be authorised officers for the purpose of confiscating proof of age cards in cases of suspected fraud or other wrongful use. Persons who sell tobacco and their employees are also to be authorised officers (if over 18) but only on or near the premises or place where the tobacco is sold.

It is an offence under the *Liquor Act 1982* for a person under 18 to knowingly provide false or misleading information to enable the documentary evidence of proof of age to be obtained by that person or any other person. This offence applies where that proof of age is obtained for any purpose, including for the purposes of the new provisions.

Schedule 1 [2] inserts proposed section 59A. The proposed section will make employers liable for the contraventions of employees who sell tobacco to persons who are under 18. An employer who did not know of a contravention and could not, by due diligence, have prevented it will not be liable. Persons who appoint agents will also be liable, as well as the holder of the relevant tobacco retailer's licence under the *Business Franchise Licences (Tobacco) Act 1987*.

Schedule 1 [3] inserts savings and transitional provisions into Schedule 4. The new defence to the offence of selling tobacco to a person under 18 will not apply in respect of proceedings for an offence alleged to have been committed before the new defence commences. Instead the current defence will continue to apply in such cases. The new provision making employers liable for employees' contraventions of the prohibition on selling tobacco to persons under 18 will not apply to contraventions occurring before the new provision commences.