

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

West Bengal Act XXXV of 2001¹

THE WEST BENGAL PROHIBITION OF SMOKING AND SPITTING AND PROTECTION OF HEALTH OF NON-SMOKERS AND MINORS ACT, 2001.

[Passed by the West Bengal Legislature.]

[Assent of the President of India was first published in the *Kolkata Gazette, Extraordinary*, of the 12th March, 2003.]

An Act to provide for prohibiting the use of tobacco in any form and spitting in places of public work or use and in public service vehicles in the State of West Bengal and to make provisions for the protection of health of non-smokers and minors and other matters connected therewith or incidental thereto.

WHEREAS it is expedient, in the public interest, to prohibit the use of tobacco in any form and spitting in places of public work or use and in public service vehicles and to protect the health of non-smokers and minors in the State of West Bengal;

It is hereby enacted in the Fifty-second Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the West Bengal Prohibition of Smoking and Spitting and Protection of Health of Non-smokers and Minors Act, 2001.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of West Bengal.

(3) It shall come into ²force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(1) “advertisement” means and includes any notice, circular, wall-paper, pamphlets, display on hoardings, telephone booths or any visible representation made by means of any light, sound, smoke, gas, writing instruments, stickers, symbol,

¹ For proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of that Assembly held on the 12th December, 2001.

² This Act came into force w.e.f. 1.5.2003 vide Health & Family Welfare Department Notification No. HF/0/PHP/211/0-1/2002, dt. 26.3.2003, published in the *Kolkata Gazette, Extraordinary*, Part 1, dt. 4.4.2003.

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(Sections 3,4.)

colours, logo, trade mark, display on articles like T-shirts, shoes, sportswear, sportgears, caps, carry bags, etc., or any other means which has direct or indirect effect of promoting, smoking and/or tobacco chewing and the expression 'advertise' shall be construed accordingly;

(2) "authorised officer" means any person authorised under section 4 of this Act;

(3) "chewing" means chewing of tobacco, *gul*(tobacco powder), *khaini*, use of *gudakhu*(tobacco paste), *supari* with tobacco, *pan masala*, *zarda*, *ghutka*, and the like;

(4) "notification" means a notification published in the *Official Gazette*;

(5) "place of public work or use" means public places namely auditoriums, hospital buildings, health institutions, educational institutions, libraries, court buildings, public offices and public conveyances including Railways;

(6) "public service vehicle" means a vehicle as defined under clause (35) of section 2 of the Motor Vehicles Act, 1988;

59 of 1988.

(7) "smoking" means smoking of tobacco in any form, whether in the form of cigarette, cigar, *beedies* or otherwise with the aid of pipe, wrapper, or any other instrument;

(8) "spitting" means voluntary ejection of saliva from the mouth after or without chewing and ejection of mucus from the nose with or without inhaling snuff;

(9) "State Government" means the Government of the State of West Bengal.

Declaration of places of public work or use.

3. After the commencement of this Act, the State Government may, by notification in the *Official Gazette*, declare from time to time, any place to be a place of public work or use in West Bengal, for the purposes of this Act.

Power of State Government to appoint person or persons to act as authorised officer or officers.

4. (1) The State Government may, by notification in the *Official Gazette*, authorise one or more persons, who shall be competent to act as authorised officer or officers under this Act.

(2) Every person authorised under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

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| <p>5. No person shall smoke or spit in any place of public work or use.</p> | <p>Prohibition of smoking and spitting in places of public work or use.</p> |
| <p>6. No person shall smoke or spit while travelling in, or using, a public service vehicle.</p> | <p>Prohibition of smoking and spitting in public service vehicles.</p> |
| <p>7. Notwithstanding anything contained in any other law for the time being in force, no person shall advertise or cause to advertise, in any place of public work or use and in any public service vehicle, any material which may directly or indirectly promote smoking or chewing of tobacco or any product or products containing tobacco even if classified by any other name.</p> | <p>Prohibition of advertisement of smoking and chewing.</p> |
| <p>8. No person shall sell cigarettes, <i>beedies</i>, chewing tobacco, <i>gul</i> (tobacco powder), <i>gudakhu</i> (tobacco paste), including tobacco based tooth paste, <i>supari</i> with tobacco, <i>pan masala</i>, <i>zarda</i>, <i>snuff</i>, <i>ghutka</i>, <i>khaini</i> or any such other smoking or chewing substance or substances containing nicotine and/or tobacco to any person who is below the age of eighteen years.</p> | <p>Prohibition of sale of cigarettes, etc. to minors.</p> |
| <p>9. No person shall, by himself or by any person on his behalf, store, sell or distribute cigarettes, <i>beedies</i>, chewing tobacco, <i>gul</i> (tobacco powder), <i>gudakhu</i> (tobacco paste), <i>supari</i> with tobacco, <i>pan masala</i>, <i>zarda</i>, <i>snuff</i>, <i>ghutka</i>, <i>khaini</i> or any such other smoking substance or substances containing tobacco within an area of 10 metres around educational institutions.</p> | <p>Prohibition of storage, sale and distribution of cigarettes, etc.</p> |
| <p>10. The owner or manager or incharge of affairs of every place of public work or use shall display and exhibit a board at a conspicuous place or places in and outside the premises visited or used by the general public prominently stating that the place is a "No Smoking" and "No Smoking Zone" and that "Smoking and Spitting in place of public work or use is an Offence".</p> | <p>Display and exhibition of board.</p> |
| <p>11. Any person, who contravenes the provisions of,—
(1) sections 5, 6, 9 or 10, shall be punishable with fine which may extend to one thousand rupees and in case of second or subsequent conviction, shall be punishable with fine which shall not be less than two thousand rupees, but which may extend to five thousand rupees;</p> | <p>Penalty.</p> |

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- (2) section 7 or 8, shall be punishable with fine which may extend to one thousand rupees and in case of second or subsequent conviction, shall be punishable with imprisonment which may extend to three months, or with fine which shall not be less than five thousand rupees but which may extend to ten thousand rupees, or with both.

Power to
arrest
without
warrant.

12. (1) The driver, or the conductor, of a passenger vehicle in whose presence a person commits an offence punishable under section 6, may request such person to desist from smoking, and if such person fails to comply with the request, any authorised officer or any police officer not below the rank of Sub-Inspector, may arrest such person without warrant.

(2) No suit, prosecution or other legal proceeding shall lie against an authorised officer or a police officer for any arrest made in good faith under sub-section (1).

Court
competent to
take
cognizance
and try
offences.

13. (1) No court other than the Court of Judicial Magistrate of First Class shall take cognizance of, and try, an offence under this Act.

(2) No court shall take cognizance of an offence except, on a complaint in writing by an authorised officer, or on submission of a report in writing by a police officer not below the rank of Sub-Inspector, or by an authorised representative of a recognised non-government organisation devoted to the cause of controlling tobacco use and spitting, with respect to the offences under sections 5, 6, 7, 8, 9 and 10.

Certain
offences
to be
cognizable
and bailable.

14. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under sections 5, 6, 7, 8, 9 and 10 shall be cognizable and bailable.

2 of 1974.

Summary
trial of
offences.

15. All offences under this Act shall be tried summarily in such manner as provided for under the Code of Criminal Procedure, 1973.

Power to
delegate.

16. The State Government may, by notification in the *Official Gazette*, direct that any power exercisable by it under this Act may also be exercised by such officer, subject to such conditions, as may be specified therein.

Composition
of offences.

17. (1) The State Government may, by notification in the *Official Gazette*, empower an authorised officer, or a police officer not below the rank of Sub-Inspector, to compound any offence committed under this Act on payment of a sum which may not less than one thousand rupees but may extend five thousand rupees by way of composition of the offence for which such person is suspected to have committed.

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(2) On payment of such sum to such officer specified under subsection (1), the offender, if in custody, shall be released and no further proceedings shall be taken against such offender.

18. (1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the State Legislature agrees in making any modifications in the rule or the State Legislature agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

19. With effect from the date of coming into force of this Act, the West Bengal Prohibition of Smoking in Show Houses and Public Halls Act, 1950 and the Prohibition of Smoking in Passenger Vehicles Act, 1953, shall stand repealed:

Repeal and savings.

Provided that the repeal shall not affect—

- (a) the previous operation of any law so repealed or anything done or suffered thereunder, or
- (b) any penalty, punishment incurred in respect of any offence committed against any law so repealed, or
- (c) any investigation, legal proceeding or remedy in respect of penalties, punishment as aforesaid;

and any such legal proceedings or remedy may be instituted, constituted or enforced, or any such punishment, penalty may be imposed, as if this Act has not been passed.

West Ben.
Act LV of
1950.
West Ben.
Act XVI of
1953.

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**Statement of objects and reasons on The West Bengal
Prohibition of Smoking and Spitting and Protection of
Health of Non-smokers and Minors Bill, 2001
(Bill No. 37 of 2001).**

STATEMENT OF OBJECTS AND REASONS

In pursuance of the judgement passed by the Hon'ble Supreme Court in the case between Murli S. Deora *versus* Union of India and Others {vide Writ Petition (Civil) No. 316 of 1999} and in order to protect the non-smoking public from the hazards of passive smoking, it is considered necessary to prohibit smoking or spitting of tobacco (in any form or manner) in places of public work or use and in public service vehicles which are visited by people commonly.

Further to the above, promotion of the use of tobacco through advertisement also needs to be discouraged to protect the health of the citizens, particularly the minors. As such, sale of tobacco (in any form or manner) also needs to be prohibited to persons below the age of 18 years and sale, distribution or storing of such tobacco products within a place of 100 metres around place of worship, or any college, school or other educational institutions also needs to be restricted.

2. The Bill has been prepared with the above objects in view.

KOLKATA,
The 7th December, 2001.

SURJYA KANTA MISHRA,
Member-in-charge.