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*Number 40 of 2014*

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**Protection of Children's Health (Tobacco Smoke in Mechanically Propelled  
Vehicles) Act 2014**

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**PROTECTION OF CHILDREN'S HEALTH (TOBACCO SMOKE IN  
MECHANICALLY PROPELLED VEHICLES) ACT 2014**

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[No. 40.]

*Protection of Children's Health (Tobacco Smoke in  
Mechanically Propelled Vehicles) Act 2014*

[2014.]

ACTS REFERRED TO

Public Health (Tobacco) Act 2002 (No. 6)

Road Traffic Act 1961 (No. 24)



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Number 40 of 2014

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**PROTECTION OF CHILDREN'S HEALTH (TOBACCO SMOKE IN  
MECHANICALLY PROPELLED VEHICLES) ACT 2014**

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An Act to create an offence of smoking a tobacco product in the presence of a child in a mechanically propelled vehicle; and to provide for related matters.

[25th December, 2014]

**Be it enacted by the Oireachtas as follows:**

**Definitions**

1. In this Act:

“child” means a person who has not attained the age of 18 years;

“mechanically propelled vehicle” has the same meaning as it has in the Road Traffic Act 1961;

“Minister” means the Minister for Health;

“public place” has the same meaning as it has in the Road Traffic Act 1961;

“tobacco product” has the same meaning as it has in the Public Health (Tobacco) Act 2002.

**Prohibition on smoking tobacco product in mechanically propelled vehicle in which child is present**

2. (1) The smoking by a person (including a child) of a tobacco product in a mechanically propelled vehicle in a public place and in which a child (or another child if the person smoking is a child) is present is prohibited.
- (2) A person who contravenes *subsection (1)* shall be guilty of an offence.
- (3) Where a person who contravenes *subsection (1)* is not the driver of the mechanically propelled vehicle concerned, the driver shall also be guilty of an offence.
- (4) In proceedings for an offence under this section, it shall be presumed, until the contrary is shown, that a person who was present in a mechanically propelled vehicle in which the commission of the alleged offence occurred and who appeared to a member of the Garda Síochána, at that time, to be a child, was, at that time, a child.

- (5) In proceedings for an offence under this section, it shall be a defence for a person to show that he or she reasonably believed that any person who was present in the mechanically propelled vehicle in which the commission of the alleged offence occurred had attained the age of 18 years.
- (6) Without prejudice to *subsection (5)*, in proceedings for an offence under *subsection (3)* brought against the driver of the mechanically propelled vehicle concerned, it shall be a defence for that person to show that he or she—
- (a) was, by reason of his or her driving of that vehicle, unable to prevent the commission of the alleged offence under *subsection (2)* by another person in that vehicle, or
  - (b) made all reasonable efforts to prevent the commission of the alleged offence under *subsection (2)* by another person in that vehicle.

### **Powers of member of Garda Síochána**

3. (1) A member of the Garda Síochána may, where it appears to him or her that a person in a mechanically propelled vehicle in a public place and in which a child, or a person who appears to be a child, is present, is smoking a tobacco product—
- (a) require the driver to stop the vehicle, and
  - (b) demand of any person in the vehicle whom the member suspects of committing an offence under *section 2*, his or her name and address.
- (2) A person who—
- (a) fails to stop a mechanically propelled vehicle in compliance with *subsection (1)(a)*, or
  - (b) on a demand being made of him or her under *subsection (1)(b)*, fails or refuses to give his or her name and address or gives information which is false or misleading,
- shall be guilty of an offence.

### **Fixed charge notice**

4. (1) Where a member of the Garda Síochána has reasonable grounds for believing that a person is committing or has committed an offence under *section 2*, he or she may serve on a person personally or by post at the address at which the person ordinarily resides or, at the time of the alleged offence, gave to the member or another member of the Garda Síochána, a notice (“fixed charge notice”) in the prescribed form stating that—
- (a) the person is alleged to have committed the offence,
  - (b) the person may, during the period of 28 days beginning on the date specified in the notice, make to a person specified in the notice at the address specified in the notice a payment of the prescribed amount accompanied by the notice,

- (c) if the person does not make the payment specified in *paragraph (b)*, during the period of 28 days beginning on the expiration of that period, the person may make a payment as specified in the notice of an amount 50 per cent greater than the prescribed amount referred to in *paragraph (b)*,
  - (d) the person is not obliged to make the payment, and
  - (e) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
- (2) Where notice is served under *subsection (1)*—
- (a) the person to whom the notice applies may, during the period specified in the notice, make to a person specified in the notice at the address specified in the notice the payment specified in the notice, at the appropriate time so specified in relation to the payment, accompanied by the notice,
  - (b) the person so specified may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it,
  - (c) a prosecution in respect of the alleged offence shall not be instituted during the period specified in the notice, and if the payment so specified is made during the period, no prosecution in respect of the alleged offence shall be instituted.
- (3) A prosecution in respect of an offence under *section 2* shall not be instituted unless a fixed charge notice in respect of the alleged offence has been served on the person concerned under this section and the person fails to pay the appropriate amount of the fixed charge in accordance with the notice at the appropriate time specified in the notice in relation to the payment.
- (4) In a prosecution for an offence under *section 2*, the onus of proving that a payment in accordance with a fixed charge notice has been made lies on the defendant.
- (5) Income generated by the payment of amounts pursuant to fixed charge notices under this Act shall be disposed of for the benefit of the Exchequer in such manner determined by the Minister with the agreement of the Minister for Public Expenditure and Reform.

### **Regulations**

5. (1) The Minister may make regulations prescribing any matter or thing referred to in this Act as prescribed or to be prescribed.
- (2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the

order or regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

**Penalty**

6. A person who is guilty of an offence under this Act shall be liable on summary conviction to a class D fine.

**Short title and commencement**

7. (1) This Act may be cited as the Protection of Children's Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014.
- (2) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.