

1990 BILL 259

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 259

TOBACCO CONTROL ACT

MR. SCHUMACHER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 259
Mr. Schumacher

BILL 259

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TOBACCO CONTROL ACT

(Assented to , 1990)

WHEREAS tobacco use has resulted in disease, disability and death of epidemic proportions;

WHEREAS children must be offered protection from tobacco to prevent the spread of the epidemic to future generations;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

(a) "child" means any person under 18 years of age;

(b) "distributor" means a person engaged in the business of selling tobacco products otherwise than at retail only, and includes a manufacturer or importer;

(c) "importer" means a person, including a manufacturer who imports or brings tobacco into Alberta for sale or resale;

(d) "inspector" means a person designated as tobacco inspector under this Act;

(e) "manufacturer" means any person who produces tobacco products or tobacco paraphernalia, and includes a corporation that is associated with such a person;

(f) "marketing" includes sale, distribution, packaging, advertising, promotion, and pricing;

- (g) "Minister" means the Minister of Health;
- (h) "peace officer" has the meaning given to it in *The Criminal Code*, (Canada);
- (i) "retailer" means a person engaged in any business that includes the sale of a tobacco product at retail;
- (j) "tobacco paraphernalia" means cigarette papers, cigarette tubes, cigarette makers, cigarette holders and pipes;
- (k) "tobacco product" means any product manufactured wholly or partly from tobacco and intended for use by smoking, inhalation or mastication, and includes nasal and oral snuff.
- (l) "wholesaler" means a person who
 - (i) purchases tobacco from a manufacturer or importer, or
 - (ii) brings tobacco into Alberta
 and sells that tobacco to a retailer and includes a manufacturer who sells tobacco to a retailer

(2) For the purpose of this section, two corporations are associated with each other if one is controlled by the other or if both are controlled by the same person.

Application

2 Subject to section 3 this Act does not apply to a person doing business in a municipality in which there is in force a by-law that forbids the sale of tobacco products and tobacco paraphernalia to a child.

Marketing Provisions

3(1) No person may manufacture, distribute, keep for sale, offer for sale or sell a tobacco product unless the tobacco product and the method of packaging and the package in which it is contained conform to the regulations.

(2) No person may manufacture, distribute, keep for sale, offer for sale or sell any cigarettes unless those cigarettes are enclosed in a package containing not fewer than 20 cigarettes.

(3) No person may manufacture, distribute, keep for sale, offer for sale or sell any candy, novelty or other item that is designed to resemble a tobacco product.

(4) No person may sell or offer for sale a tobacco product at a discounted, special or reduced price, including discounts on account of volume, irrespective of the source of the discount.

(5) No person may offer, give or accept consideration in return for a public display, including at retail or at wholesale, of a tobacco product or products at retail.

(6) No person shall manufacture, sell, possess, control or supply a tobacco vending machine or permit such a machine on premises owned or occupied by that person.

(7) No person shall advertise or promote a tobacco product except as permitted by regulations.

Sale and Possession

4(1) No person may directly or indirectly sell, distribute or furnish tobacco products or tobacco paraphernalia to a child.

(2) No person may grant a child authority to obtain tobacco products or tobacco paraphernalia except a peace officer for the purpose of monitoring compliance of this Act.

(3) Every person selling a tobacco product or paraphernalia shall ascertain that the purchaser is not a child.

(4) It is not a defence to a charge under subsection (1) that the seller believed the purchaser of the tobacco product or tobacco paraphernalia was not a child.

5(1) No child shall use, possess, or purchase a tobacco product or tobacco paraphernalia.

(2) A child who possesses, uses or purchases a tobacco product or tobacco paraphernalia shall, if so required by a peace officer inform where and from whom the tobacco product or paraphernalia was obtained.

(3) A peace officer or person having the powers of a peace officer who finds a child with any tobacco product or tobacco paraphernalia shall seize it.

Licensing Requirements

6(1) No person shall sell or agree to sell tobacco in Alberta for retail consumption without a subsisting retailer's licence issued under the authority of this Act.

(2) Every retailer shall be required to post any signage and information prescribed in the regulations, at the place of retail business.

(3) Every retailer shall inform all employees of the provisions of this Act.

(4) A licence issued under this section is not transferable.

(5) Every wholesaler and importer who is licensed under the authority of the *Tobacco Tax Act*, is subject to all provisions of this Act, save the provisions that are specifically applied to retailers.

Powers of the
Minister

7(1) The Minister may by order

(a) refuse to issue or renew, or may revoke or suspend any licence;

(b) prohibit any person or class of persons from acquiring licences;

(c) attach or remove conditions or terms to any tobacco licence;

(d) restrict the total number of licences issued;

(e) prohibit a person or any class of persons from distributing, keep for sale, offering for sale or selling tobacco products whereof the person is not so licensed; and

(2) Where the Minister proposes

(a) to refuse to issue or renew a licence;

(b) to suspend or revoke a licence; or

(c) to attach conditions or terms to a licence,

the Minister shall serve notice of the proposal together with written reasons on the applicant or holder of the licence.

(3) Where the Minister proposes to suspend or revoke a licence, the Minister may by order temporarily suspend the licence and the order shall take effect immediately, notwithstanding that subsection (2) has not been complied with.

Appointment of
Inspectors

8(1) The Minister may designate as a tobacco product inspector any person who, in the opinion of the Minister, is qualified to be so designated.

(2) The Minister shall furnish every inspector with a certificate of the inspector's designation as such and, on entering any place

described in subsection (3), an inspector shall, on demand, produce the certificate to the person in charge.

(3) An inspector may at any reasonable time enter upon any premises in respect of which licence is issued to make an inspection for the purpose of ensuring that the provisions of this Act and the regulations and terms and conditions of the licence are being complied with, and no person shall obstruct the inspector or withhold or destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of inspection.

Reporting

9(1) Every distributor of tobacco products shall report to the Minister, in the prescribed form and manner, and at the prescribed intervals,

(a) all information that must be reported to the federal Minister of National Health and Welfare pursuant to section 10(1) of the *Tobacco Products Control Act* (Canada);

(b) all market research respecting tobacco products undertaken within Alberta by, for or on behalf of the distributor, or obtained by the distributor;

(c) a list of the persons to whom tobacco is supplied by the distributor and the quantity supplied to each;

(d) the quantity of tobacco products imported into, and exported from Alberta by the distributor.

(2) The Minister shall make publicly available all information reported pursuant to this section.

Regulations

10 The Lieutenant Governor in Council may make regulations

(a) prescribing anything that by this Act may be prescribed;

(b) respecting the issue of retail licences, and licence fees.

Offences and
Punishment

11 Except as otherwise provided in this Act, every person other than a licensed retailer who contravenes this Act or the regulations

(a) if found guilty on summary conviction for an offence under section 4, 6, 7 or 10 is liable

(i) for a first offence, to a fine not exceeding \$2000 or to imprisonment for a term not exceeding 6 months, or to both, and

(ii) for a second or subsequent offence to a fine not exceeding \$5000 or to imprisonment for a term not exceeding 6 months, or to both; or

(b) if found guilty of an indictable offence under section 4, 6, 7 or 10 is liable

(i) for a first offence to a fine not exceeding \$200 000 or to imprisonment for a term not exceeding one year, or to both, and

(ii) for a second or subsequent conviction to a fine not exceeding \$500 000 or to imprisonment for 2 years, or to both.

12 Except as otherwise provided in this Act, every licensed retailer who contravenes this Act or the Regulations if found guilty on summary conviction under sections 4, 6 or 7 is liable

(a) for a first offence to a fine not exceeding \$2000 and a licence suspension for a period not exceeding 12 months, and

(b) for a second or subsequent offence to a fine not exceeding \$5000 and licence revocation.

13 If a corporation commits an offence against this Act, each director or other person concerned in the management of the corporate body is also guilty of, and liable to the penalty provided for, that offence unless the director or other person proves that he exercised reasonable diligence to prevent the commission of the offence by the corporation.

General

14 The Minister may subject every retailer and distributor to routine and random inspection for the purpose of monitoring compliance with this Act.

Other duties

15 Nothing in this Act affects any other legal duty or obligation of a distributor, retailer or other person existing prior to the commencement of this Act.

Crown bound

16 This Act binds the Crown.

Coming into force

17 This Act comes into force 6 months after the day it receives Royal Assent.